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MARCH 1, 1909

Railroad Transportation in Texas

BY

CHARLES S. POTTS, M. A., LL. B.,

Adjunct Professor of Law and Government, University of Texas



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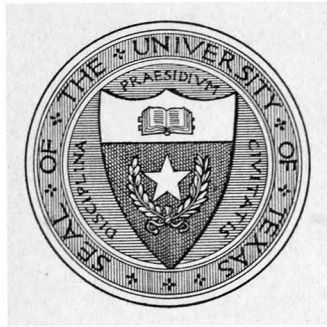
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Cultivated mind is the guardian genius
of democracy. . . . It is the only dic-
tator that freemen acknowledge and the
only security that freemen desire.

◦ President Mirabeau B. Lamar.

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PREFATORY NOTE

In recent years the proper regulation and control of the railways has become one of the paramount political questions of this country. The solution of this question must be sought by a system of judicious experimentation and by a careful study of the experience of the various governments, domestic and foreign, in their efforts to adjust the relations of the carriers to the State and to the shipping public. As the State of Texas has been one of the most vigorous and active of the States of the Union in its dealings with the railways, and has in many ways been a pioneer in the field of regulation, especially in the regulation of the issue of railway securities, a history of the State's relations to the railways cannot fail to interest students of railway problems in other sections of the country. Accordingly an effort is here made to present an account of the railway history of the State from the beginning to the present time, including an account of the State's efforts to regulate the railways first through legislative enactment and later through a railway commission.

Mention should be made of the assistance received in the preparation of this bulletin from the members of the Railroad Commission, especially from the late Chairman of the Commission, Judge L. J. Storey. Many valuable suggestions were also received from members of the Commission office force, including Mr. R. A. Thompson, now connected with the Interstate Commerce Commission but for many years Expert Engineer to the Texas Commission, and Mr. J. J. Arthur, Chief Rate Clerk to the Texas Commission. Acknowledgments should also be made to Professor B. H. Meyer, of the Carnegie Institute, under whose general direction this work has been done.

RAILROAD TRANSPORTATION IN TEXAS

CHAPTER I.

CONDITIONS PRIOR TO THE ADVENT OF RAILWAYS.

I. Inland Water Communication.

The greatest obstacle which had to be overcome by the early Anglo-American settlers in Texas was the almost total lack of means of communication and transportation. At this time there were three small centers of Spanish population within the limits of the State, at La Bahia, now Goliad, Bexar, now San Antonio, and Nacogdoches, but they were widely separated and the roads by which they were connected were no more than blazed trails, sufficient only to guide the traveler to the fords of the rivers. For the rest, Texas was a wilderness, and some five hundred miles of unoccupied territory separated it from the frontier settlements in the United States, at New Orleans, Natchez, Memphis, and St. Louis. To reach the State, the early settler was forced either to transport his family and household effects overland across this unsettled area, or to resort to the uncertainties and dangers of Gulf and river navigation. Nor were his difficulties in this respect materially lessened upon his arrival in the country. As soon as his first crop was gathered he was forced to seek a market for his surplus products, especially his cotton; and it was with very great difficulty that the country was supplied with clothing and other necessary articles of importation.

A glance at the map of Texas might lead one to suppose that the State is well supplied with navigable rivers. Unfortunately this is not true. Outside of the Rocky Mountain region, there is probably no other North American area as large as Texas that is so poorly supplied with navigable streams. The rivers of the State are long enough and at times carry tremendous volumes of water, but the flow is so uncertain during many months in the year that navigation is impossible except for short distances near the mouths of the streams.

The commercial use to which the rivers of Texas have been put has varied greatly at different times in the State's history. In the early days before the railroad era, when the choice of the settler lay between the river boat and the ox-cart, the rivers were of considerable commercial importance. The Red River supplied an outlet to New Orleans for the northeastern portion of the State, the traffic of this section passing out by way of the town of Jefferson, down Cypress Bayou, across Lake Caddo to the Red River. Navigation above this point on the Red River was interfered with by what was known as the Great Raft, an accumulation of drift wood which blocked the channel for many miles near the town of Fulton, Arkansas. Above the Raft small boats were used as far up as Preston in Grayson county.

In South Texas, most of the commerce of the coast country passed in and out along the rivers and arms of the sea. Before Texas revolted from Mexico, a steamboat was making regular trips on the Brazos, and in the early fifties the Galveston and Brazos Navigation Company opened a canal connecting Galveston bay with the Brazos, thus bringing the products of Brazoria and adjacent counties to the wharf at Galveston. In this way it was estimated that a saving of \$50,000 annually in freights and insurance was effected.¹ Richmond was at the head of regular navigation, though occasional trips were made as far up as old Washington, near the present site of Hempstead. Galveston Bay and Buffalo Bayou furnished water connection between Houston and Galveston, and four steamboats were engaged in this trade as early as 1838.² The Trinity river was regularly navigated to Liberty, seventy-five miles from Galveston, and occasionally as far up as Magnolia, some ten miles west of Palestine, but Rankin's statement that "the river may be successfully navigated with but little difficulty from six to nine months in the year, for 300 miles by land, and 500 by the course of the river,"³ seems to have been one of those loose exaggerations of which we find many in the early descriptions of Texas and her resources.

The Sabine Lake and the Neches and Sabine rivers furnished a modicum of transportation facilities for the lumber and cotton

¹Comptroller's Report, 1854-5, pp. 15 and 271-4.

²Morphis, *Conditions in Texas*, 1834, p. 398.

³Rankin, *Texas in 1850*, p. 121.

of the southeastern section of the State. The situation in this region is well stated in a letter written in 1843 by S. H. Everitt to Anson Jones, afterwards President of the Republic. He said, "There must be some place for the receiving and forwarding of the cotton of Texas at the mouths of the Neches and Sabine. The Sabine pass is not suitable, because flat boats coming down the river cannot cross the lake with safety and that, and keel boats, are the only kinds of boats that can at this time come down the river Neches, and it will require much labor before steamboats can navigate the river. Cotton can be brought down the river from Jasper county at an expense of \$1.00 per bale, and from Nacogdoches for \$1.50 to \$2.00; while the expense of shipping to Natchitoches (on the Red River in Louisiana) is from \$5.00 to \$7.50 per bale, and the expense on a bale of cotton shipped to New Orleans from Natchitoches is quite as much as it would be to ship the bale of cotton from Sabine Lake to New Orleans, or to Galveston."

The facilities for navigation on the southwestern coast were confined mainly to the Gulf and its inlets, Matagorda, Aransas and Corpus Christi bays. The Colorado had at times been navigated as far up as Austin, but in 1850 Rankin reports that "steam-boating is not now successfully prosecuted on account of the unimproved condition of the channel."⁴ The Guadalupe was used occasionally up to Victoria, and steamboats plied on the Rio Grande as far up as Rio Grande City,⁵ though Rankin assures us that "the stream at present is navigated by steamboats to a distance of about 500 miles."⁶

II. Early Attempts at River Improvement.

Prior to the Civil War the State made at least one serious attempt to improve the Texas rivers and bays along the coast so as to render them more serviceable to the rapidly increasing trade of the State. As early as 1839 the treasurer of the Republic paid from his empty coffers a warrant for \$520 expended in surveying the harbors on the Gulf coast.⁷ In his message to the Fourth Con-

⁴Rankin, *Texas in 1850*, p. 155.

⁵Riddle, *Immigrants' Guide*, p. 76.

⁶Rankin, p. 172.

⁷*Austin City Gazette*, October 30, 1839.

gress, November 12, 1839, President Lamar urged the establishment of a new department, to be known as the Home Department, one of whose duties should be the supervision of the proposed road building and river improvement. In 1852 a bill was introduced into the State Senate appropriating some \$250,000 for river improvement. Four years later the work was entered upon in earnest, the treasury stringency having been relieved by the money received from the Federal Government as a result of the adjustment of the New Mexico boundary dispute. An act was passed in 1856, carrying a total sum of \$315,000 to be used on river and harbor improvement. It provided for the appointment of a State Engineer, who was to have control of the work and who, with the Governor and Comptroller, composed a board for apportioning the funds to the various projects. Each locality was required to raise by subscription one-fourth the amount allotted to it by the board.

The following table⁸ shows the contracts approved by the board up to 1858. Two or three other places had raised the required funds and their contracts were pending:

<i>River.</i>	<i>Section.</i>	<i>Consideration.</i>
Guadalupe.....	Mouth to Victoria.....	\$22,850
Western Bays.....	Matagorda Bay to Aransas and Guadalupe rivers.....	57,500
San Jacinto.....	Clapper's Bar.....	22,725
Trinity.....	Bar at mouth.....	15,120
Brazos.....	Mouth to Washington.....	50,000
Colorado.....	Canal around raft.....	35,000
Colorado.....	From raft to Wharton.....	11,250
Cypress Bayou....	Jefferson to State Line.....	21,298
Oyster Creek.....	Canal to Retrieve.....	3,833
Sabine.....	Up to Logansport.....	31,455
Galveston Bays....	To Canal and Red Fish.....	23,000

This work progressed satisfactorily during the next two or three years and by the beginning of the Civil War river navigation had reached its high water mark. In 1859, a writer says "A considerable portion of the cotton made in Shelby county was shipped down the Sabine river this season. The people in this section

⁸*Texas Almanac*, 1858, p. 191.

of the country, in view of the improvements going on to open up the Sabine river, are much pleased with the probability of being able hereafter to turn their entire trade to New Orleans and Galveston, through this channel. * * * The steamer 'Uncle Ben' made five successful trips, two of which were as high up as Smith county, a distance of nearly 800 miles, carrying out nearly 1000 bales of cotton each trip. Also the 'Pearl Plant' and other boats have done considerable in the Sabine trade, and without the least difficulty from leaning timbers. * * * I have no doubt that 60,000 or 70,000 bales of cotton will find its way to market next season through this channel to New Orleans and Galveston."⁹

With the outbreak of hostilities, the efforts at river and harbor improvement ceased and all the energies of government and people were turned in another direction. As a result the channels became clogged, commerce declined and river navigation almost ceased. After the war there were a few attempts by private parties to clear the rivers and revive the river trade, but they were only partially successful.¹⁰ The rapid construction of railways after 1870 largely removed the incentive to river improvement. Most of the streams have ceased to be factors in the transportation problem of the State, though considerable quantities of cotton, lumber and other low grade freight are still floated down the rivers to the Gulf ports. It remains to be seen whether the efforts at canalization now being made by the United States Government will succeed in making the Trinity, the Brazos, and other Texas rivers successful rivals of the railroads.

III. Overland Trade and Travel.

Before the advent of the railway, overland trade and travel were accomplished by means of the ox-wagon and stagecoach. The roads were few and poor; road building for the most part consisted merely of clearing the brush from the right of way and log-bridging such streams as could not be conveniently forded. Sev-

⁹*Texas Almanac*, 1859, p. 151.

¹⁰A writer in *Flake's Bulletin*, February 4, 1869, says that a company was chartered by the Legislature in 1866 and had opened up the Neches river to Holly's Bluff in Trinity county and proposed to open it immediately to Shook's Bluff in Cherokee county. Dr. O. Teagarden, president of the company, was then in Galveston to purchase a steamer to put on the river.

eral efforts were made by the Republic to build national highways. In 1838, commissioners were appointed to open a road from Bastrop by way of the upper three forks of the Trinity to a point on the Red River not below Spanish Bluff nor above the Cross Timbers.¹¹ In 1839, the House passed a bill to reopen the old road from San Antonio to Nacogdoches, but it died in the Senate. Another House bill, providing for opening a national road from Washington on the Brazos to the Sabine, produced a very warm debate in the Senate. Several members opposed the bill because it appropriated for the enterprise \$500 from the national treasury. Where was the money to come from? Said one patriot, "We have an army, a navy, and all the officers of government to pay, soldiers to clothe and feed, Mexicans and Indians to whip, and to guard our frontier—uses, in fact, for ten times as much money as we can raise." Others opposed it because they believed it was an attempt at class legislation, and that it was prompted by the local greed and grasping spirit of Jasper county. The result was that when the bill became a law the \$500 appropriation had been eliminated and the counties were left to open the road at their own expense.¹² Another attempt at highway building occurred in 1844 when Congress provided for opening the "Central National Road of the Republic of Texas." It was to run from the mouth of the Elm Fork of the Trinity to a point on Red River opposite the mouth of the Kiamisha. The road was to be located and surveyed and then let out to contractors, who were to be paid for their work by a grant of public lands, provided that the cost of the road should not exceed one hundred and sixty acres of land to the mile. The road was to be thirty feet wide, the bridges fifteen feet wide, and the stumps not more than twelve inches high.¹³

As the population increased, the counties gradually opened roads to accommodate the traveling public, and private stage lines were established between the principal towns. These stage lines were the forerunners of the railways, and served as models for the early railroad companies. They were usually owned by an individual or company called the "Contractor." The roads over which

¹¹Gammel, *Laws of Texas*, Vol. I, p. 1523; this work will hereafter be referred to as "Gammel."

¹²*Austin City Gazette*, January 1 and 22, 1840.

¹³Gammel, Vol. II, p. 1013.

the stagecoaches traveled were generally laid out and surveyed by the Contractor, but they were kept in repair by the counties through which they passed. Depots were established in all the important towns on the routes and tickets for transportation were sold as is done by the railroad companies of today. The teams consisted of from four to six horses or mules. An average speed of five to eight miles per hour was made, but it is said that in bad weather the passengers were sometimes compelled to walk and prize mud from the wheels. Fresh teams were secured from time to time at stations scattered along the route and taverns and eating stands were provided for the refreshment of the passengers. The usual cost of transportation was ten cents per mile, each passenger being allowed a small amount of hand baggage.

The number of stage lines in Texas probably reached a maximum limit about 1860. The *Texas Almanac* of that date shows thirty-one distinct stage lines, forming a perfect network of lines that covered all the settled portions of the State. It is a matter of interest to note that a strong tendency toward consolidation had made itself felt even at this early date, for we find that one concern, the firm of Sawyer, Risher, and Hall, controlled sixteen of the thirty-one lines. They were believed to be the largest mail contractors in the United States, owning many lines in Louisiana as well as most of those in Texas, and employing three hundred men and one thousand mules and horses.¹⁴

In addition to the thirty-one lines lying within the State there were two long distance lines in operation that deserve mention. One extended from Sherman to Fort Smith, Arkansas, where it made connection with a line to St. Louis. The through trip from Sherman to St. Louis was made in four and one-half days, travelling day and night. This line also extended from Sherman to Fort Concho, near the Rio Grande, where it made connection with the line from San Antonio to San Diego, California.

This latter route from San Antonio to San Diego was one of the longest overland stage lines ever established, covering a total distance of fourteen hundred and seventy-six miles. It was opened in 1857 by Mr. J. E. Burch, of California, who secured a contract with the Post Office Department to carry the mails between the two places, semi-monthly trips to be made in four-horse

¹⁴*San Antonio Daily Herald*, August 8, 1866.

coaches, the consideration being \$149,000 annually. Although thirty days were allowed for the trip, the mails were rarely out over twenty-five days, twenty three days being the average time required. The cost of a through passage was \$200, all expenses being borne by the company. The stages were so arranged "that passengers could recline in them comfortably and take their sleep while travelling." In carrying out this contract the company employed sixty-five men, fifty coaches, and four hundred mules.¹⁵ The San Antonio and San Diego route was, without a doubt, the most practicable route to the Pacific, and, had it not been for the prejudices of the Civil War period, it would probably have been chosen as the route for the first transcontinental railroad. It is interesting to note how closely the old stage route was followed, fifteen years later, by the engineers of the Southern Pacific Railway Company.

The transportation of freight was accomplished by means of ox freight-lines, which in general followed the routes used by the stage lines that led to the markets and seaports. A caravan of ox-wagons moved along at a very leisurely pace, depending on the grass along the way for the support of the teams. Many weeks and even months were required to deliver a cargo of cotton or buffalo hides at the market and to return to the interior with the sugar and coffee and manufactured goods required by the settlers. Before the opening of roads the cost of transportation was almost prohibitive. In 1842, President Houston assigns the cost of transportation, along with the danger from Indians and Mexican raiders, as a cause for the removal of the capital from Austin to some point near the sea-coast. "During the last year," said he, "the expense to the government for transportation to the city of Austin, over and above what it would have been to any point on the seaboard, exceeded seventy thousand dollars, and the extra cost of the transportation of the mail, aside from all other expense and inconvenience attending its remote and detached situation, amounts to many thousands more."¹⁶

As the country became settled, however, "freighting" came to be

¹⁵*Texas Almanac*, 1859, pp. 139-150.

¹⁶Houston's message to the Sixth Congress, June 27, 1842, Executive Records, No. 40. On January 29, 1840, the *Austin City Gazette* complains that four full weeks had passed since the last mail arrived from the city of Houston.

a permanent occupation and furnished employment to a very considerable portion of the population. The customary rate of charge was one dollar per hundred pounds per hundred miles, or twenty cents per ton-mile, if we express it in terms of the modern railway unit of work. As the present freight rate in Texas is about one cent per ton-mile, it will be seen that the introduction of the railway has reduced the cost of transportation to about one-twentieth of what our fathers were compelled to pay. This heavy cost of transportation was a tremendous handicap on the fertile black-land region of the central and northern sections of the State. The surplus wheat of this region, on account of the cost, could not be transported over a hundred and fifty miles, and either rotted in the fields or was fed to the stock. It was undoubtedly this lack of transportation facilities that caused this, the most fertile region of the State, to remain so long practically untouched, while the population fringed the Gulf and bays and navigable rivers at the southern and eastern sections.¹⁷

¹⁷The Comptroller's Report for 1850 shows sixteen counties whose assessed wealth exceeded one million dollars. They were all in South and East Texas and practically all were located on navigable water. Following are the assessed values for 1850 in some of the typical counties in Central and North Texas on the one hand and in South and East Texas on the other:

Central and North Texas Counties—	Assessed Values.	South and East Texas Counties—	Assessed Values.
Bell	\$96,000	Austin	\$1,235,000
Collin	159,000	Bexar	1,069,000
Cooke	8,000	Brazoria	3,236,000
Dallas	145,000	Fayette	1,032,000
Denton	16,000	Fort Bend.....	1,060,000
Ellis	84,000	Cass	1,022,000
Falls	40,000	Galveston	2,242,000
Fannin	538,000	Grimes	1,208,000
Grayson	183,000	Harris	1,676,000
Henderson	10,000	Harrison	3,099,000
Hopkins	227,000	Matagorda	1,323,000
Hunt	87,000	Nacogdoches	1,743,000
Kaufman	82,000	Rusk	1,717,000
Navarro	266,000	Red River.....	1,002,000
Tarrant	30,000	San Augustine.....	1,587,000
Williamson	353,000	Washington	2,102,000
Total.....	\$2,324,000	Total.....	\$26,353,000

The total assessed wealth of the State for that year was \$50,715,000, of which it will be seen more than one-half was located in the sixteen counties of South and East Texas, just enumerated.

IV. Early Trade Districts and Trade Centers.

In the days of the "freighters," Texas was divided geographically into five trade districts, each tributary to one or more market towns and seaports. The boundaries of these districts overlapped each other and shifted from time to time, but the districts were distinct and fairly definite. The most important of these districts was that tributary to Houston and Galveston. Roughly speaking, it had the Neches for its eastern boundary and the Colorado for its western boundary, and it extended northward to the Red River. The region lying to the east of the Neches and south of Nacogdoches and Shelby counties sent most of its products to the Galveston and New Orleans markets by way of Sabine Pass, though at times considerable trade crossed the Sabine to Natchitoches and other Red River points for shipment to New Orleans. Lying west of the Colorado and south of Erath and Eastland counties was a great, relatively unsettled region whose chief market was San Antonio, and whose seaports were Port Lavaca, Indianola, Matagorda, Texana, Saluria, and Corpus Christi. The trade of the Rio Grande valley as far northward as the San Diego stage line, centered in Brownsville and Brazos Santiago. The fifth district stretched from the Red River across the northern portion of the State to the frontier counties in the west. Its chief market and port was the town of Jefferson, which was connected with the Red River by Cypress Bayou and Caddo Lake. Shreveport was a strong rival of Jefferson, while Clarksville was the leading distributing point for the commerce on the Red River above the Great Raft.

The rival cities of Houston and Galveston took their rise at the same time, during the period immediately following the Texas revolution in 1836. Galveston has always been the chief seaport on the Texas coast, while Houston at the head of navigation on the Buffalo Bayou early came into prominence as a distributing center. In 1836 Galveston had hardly one vessel per month. In 1838, vessels were coming and going daily and the imports during the first quarter of the year amounted to more than a quarter of a million dollars. A writer in the *Houston Telegraph*, June 16, 1838, says that Galveston then had fifty or sixty elegant buildings, where there had been only one twelve months before. In a public address in Galveston, June 29, 1839, Dr. Anson Jones, afterwards

President of the Republic, said: "I am happy, fellow citizens, to see the evidences of prosperity which now immediately surround the island of Galveston. It is but about eighteen months since the improvements commenced on this island; and now, after the lapse of so short a time, the city of Galveston, like Venice, the bride of the Adriatic, has arisen as if by enchantment from the waters, and smiles gloriously and beautifully upon the sea which surrounds her. Your population, which already amounts to near three thousand, is rapidly and constantly increasing." The population had grown to 5000 in 1850 and to 15,000 in 1865, despite the ravages of the Civil War. The exports through the port of Galveston, which amounted to \$23,000,000 in 1865, had grown to ten times that figure in 1907.

Houston's growth kept pace with that of Galveston until after the war. Then, as a result of its railway connections and the establishment of manufacturing enterprises it gradually forged ahead in wealth and population, and as an inland trading center.

The principal seaports for San Antonio and the region west of the Colorado were Port Lavaca and Indianola, rival towns on Matagorda Bay.¹⁸ The population numbered about 3,000 and 2,000 respectively in 1860. In that year Port Lavaca exported 30,000 bales of cotton and Indianola 28,600. Another rival port in this section was Corpus Christi, whose population in 1860 was about 4,000. In 1875 Indianola was completely overwhelmed by a great tropical storm similar to the one that visited Galveston in 1900. Today only a single boat house marks the spot where this flourishing seaport once stood.

Brazos Santiago was mainly engaged in trade with Mexico, nearly four million dollars' worth of imports coming from that country in 1859. Of this amount, however, more than three million dollars consisted of silver bullion. Sabine Pass, on the other

¹⁸The so-called Cart War was an incident connected with this overland freight business between San Antonio and the seaports. In 1856 the people of Colorado county were thrown into a panic by the discovery of what seemed to be a well matured plan to produce a slave uprising. The Mexicans, who were numerous in that section, and who were largely engaged in the freight business between San Antonio and the coast, were accused of guilty complicity in the proposed revolt. So, as a result, their wagon trains were attacked by lawless whites, their animals killed, and their goods carried away. Governor Pease was forced to order out the militia to restore order.

hand, was mainly engaged in the export trade. In 1859, the exports from this port were 18,000 bales of cotton, 1,099,000 feet of lumber, 12,000,000 shingles, 7,000 hoop poles, 97,000 staves, 5,669 beeves, and 23,700 pounds of tobacco. The imports during the same year were about 100,000 barrels of assorted merchandise.¹⁹

In the history of the early commercial struggles in Texas, there is no story more pathetic than the rise and decay of the town of Jefferson. Before the railway era it was by far the largest city and trading center in North Texas, and second only to Galveston as a shipping point. Cotton, wheat, hides, and lumber, all the surplus products of a region as large as many of the States of the Union, sought their way, on slow-moving wagon trains, to the wharves of Jefferson, where they were loaded on small steamers that threaded their way through the tortuous channel of the Big Cypress, across Lake Caddo, and down the Red River to New Orleans and the commercial world beyond. On the return trip the steamers brought to Jefferson the manufactured goods of other sections and of foreign lands, which were distributed westward to Sherman, Dallas, Fort Worth and other frontier settlements to the foot of the plains. It is estimated that at one time one-fourth of the entire trade of the State passed through Jefferson. For the years 1859 and 1860 the export cotton trade of Jefferson amounted to 88,000 bales and 100,000 bales respectively, while the exports from Galveston were 118,000 bales and 148,000 bales for the same years. The wagon trade was so large "that the roads leading from the west were literally so blocked up with vehicles that passage was difficult."²⁰

But a change came with the building of railways into Jefferson's trade district. In the early seventies, the completion of the Houston & Texas Central to Dallas and Sherman furnished an outlet to the Gulf, the main line of the Texas and Pacific gave an outlet to New Orleans by way of Shreveport, and the Transcontinental Branch, connecting with the Iron Mountain at Texarkana, gave a direct line to St. Louis. The little river steamer and the ox-wagon proved no match for the locomotive. New commercial centers sprang up in the west and Jefferson's wagon trade began to decline. Her enterprising business men made a strong fight to

¹⁹*Texas Almanac*, 1861, p. 237.

²⁰*Galveston News*, September 1, 1881.

hold the trade they had so long enjoyed. They organized themselves into a railway company and built a narrow-gauge line west through Sulphur Springs to Greenville, and later to McKinney. They built a saw mill, an iron foundry, an oil refinery and a wagon factory.²¹ But they fought a losing battle. "The building of the Texas and Pacific worked an era of decline for Jefferson, which has depreciated her property seventy per cent since 1874, forced half her population to move away, left her finest buildings without a tenant, and partially made her the Palmyra of Texas. Railroad competition for freight has forced steamboats out of the bayou, which they rarely or never ascend as in former days, but stop at Shreveport."²² Her population decreased from 12,000 in 1870 to less than 5,000 in 1880, and to 3,000 in 1890.

Clarksville had a career similar to that of Jefferson, but somewhat less dramatic. A writer in the *Galveston News* of September 1, 1881, says: "This, the oldest town in Northern Texas, was begun in 1835, and up to 1860 continued the leading place in that section, and was such in 1842 when neither Paris, Dallas, nor Bonham had an existence. It was to North Texas what Jefferson was to the eastern part of the State, and commanded the trade of a most extended section, then but sparsely settled and little known. Before the days of railroads in Texas, Clarksville procured its supplies from New Orleans by way of Red River, steamboats delivering their cargoes at Rowland's Landing, fifteen miles distant, from which point wagon transportation was used. Clarksville is said to have sold and distributed her goods as far west as El Paso. Like Jefferson, the trade of the town came to a stand-still simultaneously with the railroad era, because most of the country tributary to Clarksville then began to patronize other markets opened up."

V. The Movement of Cattle.

One other phase of the early transportation system of Texas deserves a passing notice in this connection. Reference is here made to the transportation of cattle to the Northern prairies and to the markets. An important feature of this class of freight is that, in the absence of convenient means of shipment, it can be

²¹*Galveston News*, February 4, 1883.

²²*Galveston News*, September 1, 1881.

made to transport itself. So before the opening of railway routes to the North and East, the surplus beef cattle of the State were driven overland to markets five hundred to a thousand miles away. The cattle of Southern and Eastern Texas, with the exception of a small number that went by boat from Jefferson, Galveston and other seaports, were driven across the State of Louisiana to New Orleans. But the great cattle movement was "up the trail," through the Panhandle country of Texas to Dodge City, Kansas. From there these stalwart Texans were usually scattered over the prairies of Kansas, Nebraska, and even as far northward as Minnesota, to be fattened, and driven later in the season to St. Louis, Kansas City, or Omaha for slaughter, or for trans-shipment to New York or Chicago. This overland movement to the Northern ranges reached a maximum in the early seventies when it is estimated that as many as 500,000 cattle were driven up the trail in a single season. With the opening of through railway lines to the North, the movement on the trail began to decline and had almost ceased by 1890. In 1879, about 257,000 were driven overland and 245,000 head were shipped out of the State by rail and water.²³

²³*Galveston News*, September 1, 1879. For an account of the trouble produced by the spread of Texas or tick fever among Northern cattle, see an article by the present writer in the *Review of Reviews*, January, 1904.

CHAPTER II.

THE DEVELOPMENT OF THE RAILWAY NET.

I. Early Attempts at Construction.

The railway history of Texas begins simultaneously with the State's existence as an independent republic. The first congress which met in the fall of 1836, launched the famous Texas Railroad, Navigation and Banking Company. This was about as wild an enterprise as one would expect to find in a new community, and it bears a striking resemblance to many of the reckless banking and transportation schemes that were foisted upon the people of the Western and Southern States of the Union, in the great period of expansion and speculation just preceding the panic of 1837. The extravagance of the adventure will be more readily appreciated if the actual conditions of the infant nation be kept in mind: the war for independence not yet over and apt to flame up again at any moment; the machinery of civil government hardly yet in motion; the population, scarcely numbering 50,000, scattered thinly over an area two or three times as large as New England, without a circulating medium, and possessed of scarcely a dollar of surplus capital available for such an enterprise.

The fathers of the enterprise were Dr. Branch T. Arthur, James Collingsworth, T. J. Green, T. F. McKinney, A. C. Horton, A. C. Allen, and Mosely Baker, names prominent in the history of the Revolution. They seem to have had visions of a sort of Credit Mobilier that should have control of the banking and transportation facilities of the country, and should have unlimited means for speculating in lands and all kinds of personal property. The charter granted by Congress and approved by President Houston, December 16, 1836, conferred upon the company "the right of connecting the waters of the Rio Grande and the Sabine, by means of internal navigation and railroads, from and to such particular points of connection as may be agreed upon and selected by said company, with a privilege also of constructing such branches, either by canals or railroads, to connect with the main line above named, as may be agreed upon and determined by

said company.”¹ That is, the company was to construct a complete system of river, canal, and rail transportation facilities, including a main line across the entire country from east to west and as many branches as the demands of the community or the interests of the company might dictate. In addition to this the company was to have “banking privileges,” which, in those days, invariably meant the power to issue its notes to circulate as money, as well as to carry on the ordinary business of discount and deposit. It was to establish one central bank, after the fashion of the Second Bank of the United States, whose career was then closing, with as many branch banks as “they may think the necessities of the community require,” provided that not more than two branches should be established without the consent of some future congress. No limit was fixed to the amount of circulating notes the company might issue and the only provision for their security or redemption was that all the assets of the company were made liable for the payment of the notes and that they should bear interest at the rate of ten per cent from the date of protest for non-payment until they were fully paid. In addition to all this it was declared that the company “shall be in law capable of holding, purchasing, and conveying any estate, real, or personal, or mixed, for the use of the said corporation.”

The capital of the company was fixed at \$5,000,000, of which \$1,000,000 was to be paid in before the banking operations could begin. If, in the opinion of the company, the commercial wants of the country or the welfare of the corporation should demand

¹This project, it will be noted, was almost identical with what is now known as the Intercoastal Canal, by which it is proposed to connect up the bays along the coast by means of canals, so as to furnish inland water communications between the Rio Grande and the Mississippi at Donaldsonville, Louisiana. The project has been a frequent topic of discussion from the days of the Texas Railroad, Navigation and Banking Company to the present time. In 1850, Rankin (p. 126) said, “Nature has not conferred more distinguished advantages on any country * * * Along the coast from Sabine to the Rio Grande, it may be seen there is a natural communication almost complete, and by connecting the several rivers, bayous, and bays, the whole extent from the east to the west might be opened for safe navigation.” As stated above (p. 10), a part of the plan was realized in the early fifties when the Galveston and Brazos Navigation Company opened its canal connecting Galveston Bay with the Brazos river. At one time the company contemplated extending this canal to Matagorda Bay, “so as to allow the entire coast commerce of the west to center at Galveston.” (*Texas Almanac*, 1861, p. 226.) But

it, the capital stock could be increased to \$10,000,000, provided a bonus of \$100,000 was paid into the national treasury. The amount of the discounts the company was allowed to make at any one time was limited to three times the amount of the capital stock, and the rate of discount should not exceed ten per cent.

In return for all these privileges the company was to pay to the State a bonus of \$25,000 and two and one-half per cent of the net profits arising from the railroads and canals to be constructed and one per cent of the dividends arising from the banking department, and in addition was to transport free of cost the troops and munitions of war belonging to the State. The charter was to remain in force forty-nine years and might be renewed for a like period upon the payment of \$500,000 bonus and five per cent of the net profits from the "works." The company was given the right of eminent domain and was allowed to take possession of the public lands one-half mile on each side of the right of way and pay for them at the minimum price per acre. Finally provision was made for an annual inspection by a commissioner to be appointed by the President.

The charter of the company seems to have aroused very little opposition in its passage through Congress, but when its terms became known to the people during the political campaign of 1837, a storm of opposition and panic swept over the country. It was denounced as a monopoly, a hydra-headed monster, and the destroyer of the liberties of the people. One speaker on the floor of the Senate said, "I would rather have seen twenty thousand Mexicans invade us, than to have seen that charter pass into a

this was not done, and the company seems not to have been able to hold its own against the railway competition that developed, and operations on the canal were finally abandoned and the canal was sold to the Federal Government in 1902 for \$30,000. In 1869, there was pending before Congress "a plan for a slack water navigation by means of canals connecting the bayous and internal streams of Louisiana and Texas, the object being to provide cheap transportation for cattle and salt, etc., from Western Texas into the Mississippi Valley." (*Flake's Com. Bulletin*, February 14, 1869.) In recent years, the Intercoastal Canal project has been taken up by the commercial interests along the proposed route and the Federal Government has expended considerable sums on certain parts of the enterprise, though the project in its entirety has not yet been approved. It remains to be seen whether the government engineers can be convinced, and whether, if the canal is opened, it will be able to meet the competition of the railroads on the one hand and the coastwise trade in the Gulf on the other.

law; for we could, with little difficulty perhaps, whip and annihilate them, but we can never get rid of this devouring monster."² The *Telegraph and Register*, July 29, 1837, said editorially, "Our condition is now such that should we continue blind to our duty the fairest portions of our republic will gradually pass from our possession, and this vast institution, like a devouring monster, will commence the tremendous work of ruin; swallowing league after league, as planter after planter becomes entangled in its mighty toils; and at length county after county recedes into its capacious maw, until finally liberty takes flight from what was once Texas—the land hallowed by the sacred blood of a thousand martyred heroes." Among others who vigorously attacked the project was Dr. Anson Jones, who distributed a circular on the subject over Brazoria county and was elected to the Senate in 1837 on a platform of opposition to the company. As a result of these attacks and the hard times following the panic of 1837, the stock of the concern was never sold and the whole scheme fell to the ground.³

Between the collapse of this company and the beginning of actual railway construction in 1851, a number of companies were chartered and attempts were made to raise funds and begin the work of construction. And it would seem that the actual work of construction was begun on what is now the Galveston, Harrisburg & San Antonio Railroad as early as 1840. The road, then known as the Harrisburg & Brazos Railroad, had not been incorporated, but Mr. A. Briscoe, the promoter, let a contract for 3000 ties and advertised in March to hire sixty slaves to begin work. In its issue of May 6, 1840, the *Morning Star*, a newspaper published at Houston, says: "A large number of laborers are engaged at present in throwing up the track and preparing it for rails at an early season, and a greater number will soon be

²*Telegraph and Register*, May 30, 1837.

³A bitter personal and political enmity sprang up between many of the prominent men of the day as a result of the attacks made upon the company and its promoters. Charges of bribery and corruption were bandied about indiscriminately. One Senator declared that not an honest man was connected with the passage of the measure through Congress. (*Telegraph and Register*, May 30, 1837.) So persistently was President Houston accused of corruption in connection with his approval of the charter that he felt constrained to explain his connection with it in a speech before the United States Senate in 1854. (*Congressional Globe*, First Session Thirty-third Congress, Appendix, pp. 12-14.)

employed."⁴ The following year the road was incorporated as the Harrisburg Railroad and Trading Company, but active operations were soon discontinued, and were not resumed again until 1851.

II. Construction Prior to the Civil War.

I. Buffalo Bayou, Brazos and Colorado Railway. The first railroad actually constructed in the State of Texas was the Buffalo Bayou, Brazos, and Colorado, or what was commonly called the Harrisburg Railroad. It is now a part of the Galveston, Harrisburg and San Antonio Railroad and forms a link in the Southern Pacific line connecting Galveston and New Orleans with San Francisco. As stated above, an attempt was made to build this road in 1840, but it failed to secure the necessary capital on account of the unsettled condition of the country and the danger of another Mexican invasion. In 1847, General Sidney Sherman became interested in the enterprise and purchased all the unsold town lots of the town of Harrisburg, nine miles below Houston, at the head of navigation on Buffalo Bayou. He succeeded in interesting Northern capital in the enterprise, and in 1850 a charter was granted, the incorporators being Sidney Sherman, Hugh McLeod, John G. Todd, John Angier, Jonathan F. Barret, E. A. Allen, Wm. M. Rice, W. A. Van Alstine, James H. Stevens, B. A. Shepherd, and W. J. Hutchings, most of them men well known in the business affairs of Houston and Galveston.⁵ Jonathan F. Barret was made president. The line was surveyed from Harrisburg westward in the spring of 1851, and grading began. Late in the following year the first rails were received along with the first locomotive, the "General Sherman," and track-laying began. By August 1, 1853, twenty miles were complete and the event was celebrated by a barbecue at Stafford Point. Two years later the road was completed to Richmond on the Brazos, a distance of thirty-two miles from Harrisburg. A cheap pile bridge, only six feet above the water at a low stage, was built across the river, the middle sections being removable on flat boats to permit the passage of steamboats and other vessels that occasionally navigated the river at that

⁴P. Briscoe, "The First Texas Railroad," in the *Quarterly of the Texas State Historical Association*, Vol. VII, p. 279.

⁵Gammel, Vol. III, p. 632.

time. In 1859 the road reached Eagle Lake, and in 1860 it was completed to Alleyton, within two miles of the Colorado river opposite Columbus, a distance of eight miles from Harrisburg.⁶

It was the original plan of the company to extend the road up the Colorado river to Austin, but as construction proceeded it was seen that the natural course was in the direction of San Antonio. Accordingly a company was chartered in 1858, under title of the Columbus, San Antonio and Rio Grande Railroad, to build from Columbus by way of Gonzales and San Antonio to the Rio Grande near Eagle Pass.⁷ To connect this line with the B. B. B. & C. at Alleyton, the Columbus Tap Railway was incorporated in 1860.⁸ But the outbreak of hostilities prevented any further construction on any of these lines, and Alleyton remained the terminus and distributing center until 1868, when the Tap was completed into Columbus.

II. Galveston and Red River Railway. The second oldest railroad in the State is the Houston and Texas Central, or the Galveston and Red River Railroad as it was at first called. In one particular it is older than the B. B. B. & C., for it was incorporated by an act of the Legislature approved March 11, 1848,⁹ almost two years before the charter was granted to the Harrisburg road. The original charter was repealed on February 14, 1852, and a new one granted,¹⁰ and in 1856 the company was authorized to change its name to the Houston and Texas Central.

The original plan was to build from Galveston to the Red River, but grading began at Houston in 1853, and the Legislature, by special act, approved that action instead of requiring Galveston to be made the southern terminus. Work seems to have gone very slowly during the next three years, for when the first engine was put on in January, 1856, only two miles of line were completed. However, the road reached Cypress City, twenty-five miles, on July 27, 1856, and ten miles more were added during the next ten months, Hockley being reached on May 11, 1857. The road was extended to Hempstead during the next year, and to Millican in 1860. Here construction ceased until 1867, and Millican, like

⁶Briscoe, *Hist. Quarterly*, Vol. II, p. 279.

⁷Gammel, Vol. IV, p. 1345.

⁸Gammel, Vol. V, p. 127.

⁹Gammel, Vol. III, p. 376.

¹⁰Gammel, Vol. III, p. 1190.

Alleyton, became the distributing point for a territory two hundred miles in diameter, extending as far north as Dallas and Fort Worth.

III. Washington County Railroad. Another part of the present Houston and Texas Railroad was constructed during this period, as an independent enterprise. This was the Washington County Railroad, chartered February 2, 1856, to build from Hempstead to Brenham, the county seat of Washington county. Work began on this line in 1857 and eleven miles were opened in 1858. The road was completed to Brenham, twenty-one miles, in 1860, and that town remained an important terminus until after the close of the war.

IV. Galveston, Houston and Henderson. This was one of the most important roads built prior to the Civil War. It connected Houston, the most important inland commercial center, with Galveston, the seaport, and furnished an outlet for the roads that centered in Houston and Harrisburg. It was incorporated by act of the Legislature approved February 7, 1853.¹¹ Construction began at Virginia Point, across the bay from Galveston, March 1, 1854, and proceeded in a leisurely fashion toward Houston, reaching that city, a distance of forty-two miles, late in 1858. During these years the completed portion of the road was operated in conjunction with a steam ferry that plied between Galveston and Virginia Point. In the summer of 1859 a bridge was completed across the bay and the line from the bridge to Market Street, Galveston, was completed in 1860, thus giving direct rail connection between Houston and Galveston, a distance of fifty miles.¹²

¹¹Gammel, Vol. III, p. 1410.

¹²The proper bridging of the bay at Galveston has cost the railways and the city of Galveston a great deal of money and mental concern. In 1857, the people of Galveston voted almost unanimously in favor of issuing city bonds to the amount of \$100,000 for the purpose of constructing a bridge across the bay. The bonds were issued and the bridge, 10,000 feet in length, was constructed by Mr. Carvin of New Orleans, the contract being finished in 1859. (*Almanac, 1859*, p. 223.) About this time a question was raised as to the validity of the bonds, on account of the fact that the bridge was situated beyond the corporate limits of the city. Accordingly two acts validating the bonds were passed by the Legislature (Gammel, Vol. V, pp. 43 and 89.) The bridge was built by the city on land belonging to the city, but a contract had been entered into with the G., H. & H. R. R. Co. that it should lay its track across the bridge and use it, pay the interest on the city bonds and create a sinking fund

V. Houston Tap and Brazoria Railroad. The Houston Tap Railroad was built by the city of Houston in 1856, from Houston to Pierce Junction, a distance of seven miles, to connect Houston with the B. B. B. & C. Ry. In 1859 it was sold for \$42,000 in cash and \$130,000 in stock to the Houston Tap and Brazoria Railroad Company, which was organized under an act approved September 1, 1856,¹³ and was extended to Columbia on the Brazos river, fifty miles from Houston, by 1861. The road was built largely by the sugar and cotton planters along the route, who subscribed for the stock and paid their subscriptions by grading the

with which to pay them off at maturity. The bridge was then to become the property of the company. (*Texas Almanac*, 1859, p. 223.)

On October 3, 1867, the bridge was destroyed by a hurricane and the city transferred all its interest in it to Cowdrey and James, of New York. They made a contract with Tipton Walker, receiver of the G., H. & H. R. Co., by which they were to repair the bridge for twenty-five per cent of the gross earnings of the road until January 1, 1875. The cost of repairing the bridge was \$67,000, while the gross receipts were estimated at \$400,000 annually; that is, the railroad was forced by the contract to pay \$100,000 annually until 1875 for the use of a bridge that originally cost only \$100,000 with \$67,000 for repairs. The bridge was completed and put in operation again on June 25, 1868. While the repairs were going on, the steamship Santa Martha made daily trips to and from Virginia Point. (*Flake's Commercial Bulletin*, January 11, 18, and 25, March 3, and June 25, 1868.)

A second bridge across the bay was built by the Gulf, Colorado and Santa Fe Company in 1875, and ten or fifteen years later another was built by the Galveston, La Porte and Houston (now a part of the Galveston, Harrisburg and San Antonio). In 1892-93 the county of Galveston constructed a steel wagon bridge across the bay two and one-seventh miles long, at a cost of \$191,986. It contained ninety steel spans of eighty feet each. This splendid structure, along with the three railroad bridges, was swept away by the hurricane of September 8, 1900. The Santa Fe bridge, which was damaged least, was repaired and during the last eight years has formed the only link connecting Galveston Island with the mainland. As it is used by all the roads entering Galveston, it is unequal to the demands made upon it, and a proposition has been made for the construction of a causeway of sufficient width for all the railroads as well as the wagon traffic, at the joint cost of the county and the several railroads, including the proposed interurban electric railway. On February 2, 1907, the State Railroad Commission condemned the bridge now in use and ordered the several railroads entering Galveston to construct a causeway. In 1907 the people of Galveston voted upon themselves a special tax to pay interest and sinking fund on the causeway bonds to be issued by the county and on March 13, 1908, a general plan of procedure was agreed upon between the county officials and representatives of the railway companies, and on July 5, 1909, the contract was let to the J. F. Blodgett Construction Company, of Kansas City. The proposed causeway, which is to be built of reinforced concrete at a total cost of \$1,500,000, is expected to be ready for use by the end of the year 1911.

¹³Gammel, Vol. V, p. 46.

road with their slaves and teams. In recent years this road has been consolidated with the International and Great Northern and now forms a part of that system.

VI. The Texas and New Orleans Railroad. This road was first chartered September 1, 1856, under the name of the Sabine and Galveston Bay Railroad and Lumber Company, and was authorized to build a line from Madison in Orange county westward by way of Beaumont to tide water on Galveston Bay.¹⁴ On December 24, 1859, however, an act was approved changing its name to the Texas and New Orleans, and authorizing it to accept an act passed by the Legislature of Louisiana allowing it to construct a line in that State to be known as the "Louisiana Division" in contradistinction from the line in this State, which was called the "Texas Division."¹⁵ Work began on this line at Houston in 1858, and by August, 1860, it was completed to Liberty, a distance of forty miles, and by January 1, 1861, to the Sabine river at Orange, a distance of 111 miles.¹⁶ In February, 1861, the Texas Legislature called the attention of the Louisiana Legislature to the strategic importance of an early completion of the "Louisiana Division" of the line in case the coast should be blockaded by the Federal navy.

VII. Eastern Texas Railroad. This road seems to have evolved from a project to build a line from Henderson in Rusk county to Burkville in Newton county. It was first chartered in 1852 as the Henderson and Burkville Railroad,¹⁷ but was later allowed to begin on the Gulf coast, and in 1856 its name was changed to the Mexican Gulf and Henderson Railroad.¹⁸ In 1857 work began at Pine Island Bayou, eight miles north of Beaumont. A few miles of line were cleared of brush and grubbed, and then work ceased for lack of funds. In 1858 the Eastern Texas Railroad Company was incorporated to build a line over the route mapped out by the Henderson and Burkville Railroad, and it was required to pay Ferguson, Alexander and Company, the contractors, \$3,000 for the work already done.¹⁹ The new company began work some fifteen

¹⁴Gammel, Vol. IV, p. 744.

¹⁵Gammel, Vol. V, 49.

¹⁶Thompson, in *Trans. Texas Acad. Science*, 1900, p. 70.

¹⁷Gammel, Vol. III, p. 1145.

¹⁸Gammel, Vol. IV, p. 331.

¹⁹Gammel, Vol. IV, p. 1239.

or twenty miles south of Beaumont and during the next two years graded thirty miles northward from Sabine Pass. It seems to have forfeited its charter, for another company was incorporated under the same name January, 1860, to take over the grade and complete the line.²⁰ During the next twelve months twenty-five miles were completed and equipped with rolling stock and thirty miles more graded, when operations were interrupted by the outbreak of the war.²¹

VIII. San Antonio and Mexican Gulf. This road was the beginning of the attempt to connect San Antonio with its seaport at Port Lavaca, an attempt that was not successfully carried into execution until during the summer of 1906, when the Galveston, Harrisburg and San Antonio closed the gap between Cuero and Stockdale. The company was incorporated by an act of the Legislature approved September 5, 1850,²² but construction did not begin until 1856. In April, 1861, the line was opened from Port Lavaca to Victoria, a distance of twenty-eight miles. Victoria remained the terminus for many years.

IX. The Indianola Railroad. This road was prompted by the rivalry of the two seaports, Indianola and Port Lavaca, and was intended as an offset to the San Antonio and Mexican Gulf, which was a Port Lavaca enterprise. It was intended to extend from Indianola on Matagorda Bay through Gonzales and Austin to a connection with the Vicksburg and El Paso, a line projected across the northern portion of the State. The line was chartered January 21, 1858,²³ and fifteen miles were constructed to a junction with the San Antonio and Mexican Gulf Railway. This road was completely destroyed by the tropical hurricane that overwhelmed Indianola in 1875, and has never been rebuilt.

X. The Southern Pacific Railroad. This road was the beginning of the present Texas and Pacific Railroad, the great east and west line of the northern part of the State, a full account of which is given later.²⁴ It was first chartered February 16, 1852, as the Vicksburg and El Paso Railroad, or the Texas Western, as it was frequently called. It was projected from a connection with

²⁰Gammel, Vol. V, p. 73.

²¹*House Journal*, 1870, p. 509.

²²Gammel, Vol. III, p. 814.

²³Gammel, Vol. IV, p. 1232.

²⁴Page 52.

the Vicksburg, Shreveport and Texas Railroad at the State line, westward to El Paso.²⁵ The name was changed to the Southern Pacific by an act approved on August 16, 1856.²⁶ Work began in 1856 on a branch from Marshall to Caddo Lake to be used in transporting material for the construction of the main line. By February 10, 1858, twenty miles were completed, and seven and a half more were added the next year.²⁷ It would seem that construction work continued on this line after the outbreak of hostilities, for an act approved January 8, 1862, says: "That in view of the fact that said company has nearly completed the grading of twenty-five consecutive miles, in addition to the first section of twenty-five miles already completed and being worked, and is still progressing with the work on said road, the section between Jonesville in Harrison county and the State line should be regarded as a part of the main line and a loan of the school fund be allowed thereon."²⁸ The loan was not made, however, and no statement of the additional mileage completed has been found.

XI. The Memphis, El Paso and Pacific Railroad. The northern or Transcontinental branch of the Texas and Pacific also had its beginning during this period prior to the Civil War. It was first chartered in 1853, as the Memphis, El Paso and Pacific Railroad, to construct a line from a point opposite Fulton, Arkansas, westward along the southern bank of the Red River, through El Paso, to the Pacific Ocean. The company was organized in 1856, one million dollars of stock subscribed and \$125,000 paid into the treasury. Construction began in 1857 near Texarkana, and the friends of the project believed they would have fifty miles in operation in ninety days. But all their plans were upset by the interruption of their means of communication with the outside world by way of the Red River. During some heavy freshets in the river, immense quantities of driftwood lodged against the great "Raft," adding several miles to its length and completely cutting off communication with points below. It was then decided to build a branch line to Caddo Lake and secure materials and supplies from that source. Construction began on this branch line near Jefferson

²⁵Gammel, Vol. III, p. 1245.

²⁶Gammel, Vol. IV, p. 632.

²⁷Deussen, "Beginnings of the Texas Railroad System," *Transactions Texas Academy of Science*, 1906, p. 63.

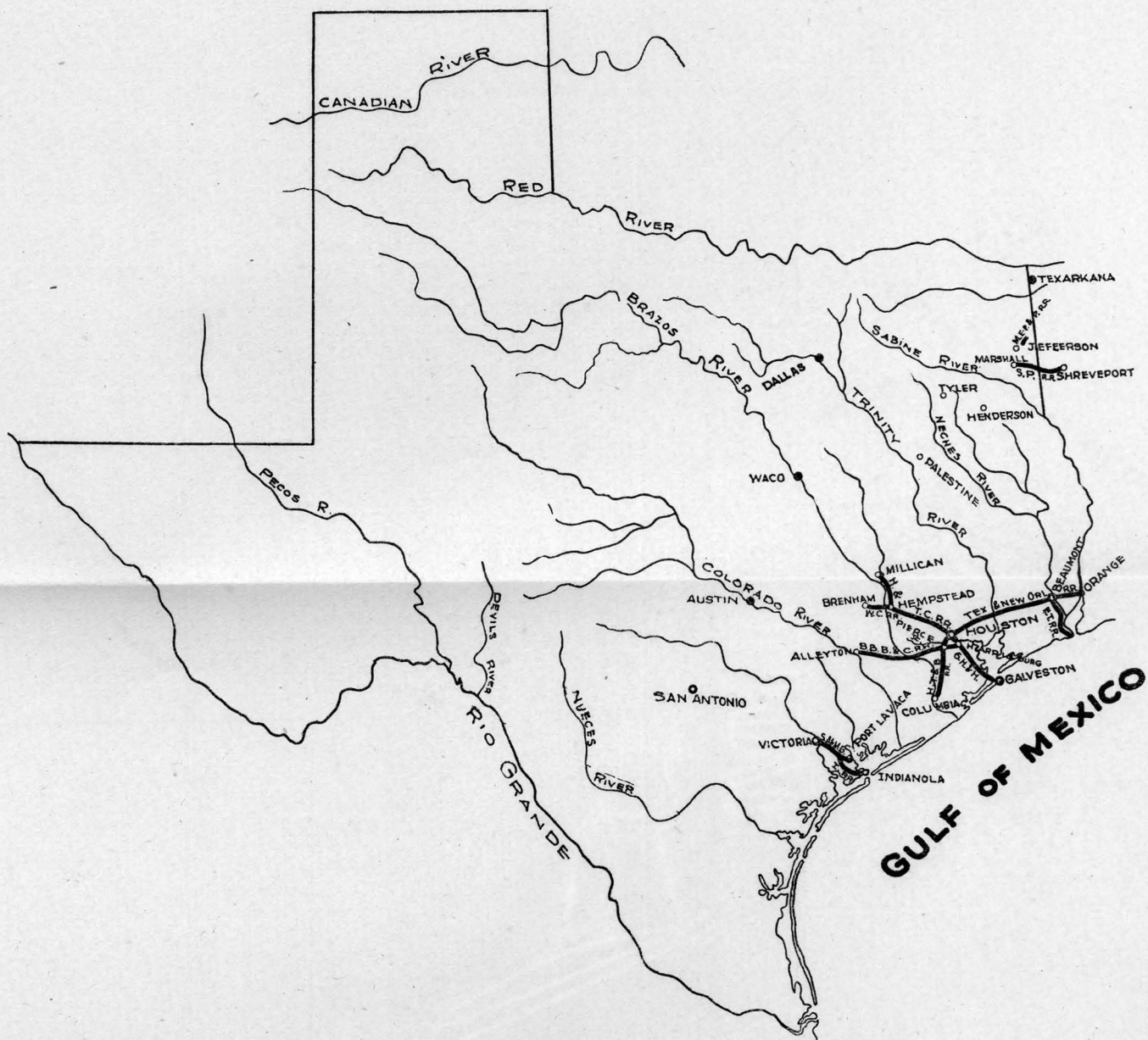
²⁸Gammel, Vol. V, p. 529.

and five miles were completed and put in operation and fifty-seven miles of the main line were graded before the outbreak of hostilities put a stop to the work. Work was resumed in 1869 and one hundred miles was put in operation during 1870.²⁹

It is believed that the preceding account covers all the railway mileage completed and put in operation up to 1862, when construction ceased on account of the war. The period is one of "loud profession and little deed." Beginning with the Texas Railroad Navigation and Banking Company in 1836, the Legislature had by special act incorporated more than fifty railroad companies and authorized the construction of many thousands of miles of line. Many of the roads were projected from the State line, or the Mississippi river, or even the Atlantic coast on the east, across the State to the Pacific coast of Mexico or California on the west, while at least one road was to extend from the Gulf of Mexico to the Great Lakes or the Canadian frontier. The result of it all, however, was the construction of eleven short lines of road, which were built largely out of the lands granted by the State and the loans made to the roads out of the school fund. And most of the roads constructed were too weak to weather the financial storm that came as a result of the war and the period of reconstruction. The following table is believed to be a fairly accurate summary of the railway construction of the period:

<i>Railroad.</i>	<i>Origin.</i>	<i>Terminus.</i>	<i>Miles.</i>
B. B. B. & C.....	Harrisburg....	Alleyton	80
H. & T. C.....	Houston.....	Millican	80
Wash. County R. R..	Hempstead....	Brenham	21
G. H. & H.....	Galveston.....	Houston	50
H. T. & B.....	Houston.....	Columbia	50
T. & N. O.....	Houston.....	Orange	111
Eastern Tex. R. R..	Sabine Pass...	Beaumont	25
S. A. & M. G.....	Port Lavaca...	Victoria	28
Indianola R. R....	Indianola.....	Junction Point.....	15
Southern Pac.....	Marshall.....	State Line.....	27
M. El P. & Pac....	Jefferson.....		5
Total.....			492

²⁹Thompson in *Texas Academy of Science*, Vol. IV, Part I, p. 69.



RAILWAYS IN TEXAS CONSTRUCTED PRIOR TO THE CIVIL WAR.

It will be noted that practically all the effective mileage centered in Houston, which then became and has since remained the most important railway center in the State. Of the five roads that did not reach Houston directly or indirectly, one was an effort to reach deep water through Sabine Pass, and two were attempts by the rival ports on Matagorda Bay to bold their traffic as against each other and their common rival, Galveston, whose importance was being greatly magnified as a result of her four hundred miles of railway connection. The two lines in Northeast Texas were feeble efforts to build a Pacific road along the "32d parallel."

The meagerness of the results obtained during the period under consideration was undoubtedly due to the inability of the companies to obtain funds with which to carry on construction. There was a very great dearth of free capital in the country and it was with great difficulty that outside capital was secured. The population was small and scattered over a large area, and the tonnage was very light. As a result capitalists could not see any prospect of returns at any early date, and refused to subscribe for the stock or to buy the bonds of the feeble companies.³⁰ To aid the companies in their efforts to secure funds the State granted to them sixteen sections of land, of 640 acres each, for every mile of line constructed, and after 1856 made them a loan from the permanent school fund, to the amount of \$6000 for every mile of line constructed and opened for traffic. In addition cities, counties, and private individuals made donations to the roads in order to secure transportation facilities. San Antonio and Bexar county put \$100,000 into the road from Port Lavaca to Victoria; Brazoria county donated \$100,000 to the Houston Tap and Brazoria; and, as previously mentioned, Galveston put \$100,000 into the bridge across the bay.³¹

A good idea of the financial operation of one of these roads may be obtained from the history of the Harrisburg line. Up to

³⁰In his message to the Legislature in 1853, Governor Pease said: "The active capital in the hands of our citizens is insufficient to insure their (railroad) construction. It cannot be disguised that the population and business of the State are not such at this time as to promise the return of an immediate profit on the amount that may be invested in such enterprises." *House Journal, 1853, Part II, pp. 22-25.*

³¹For a full discussion of the subject of public aid to railway construction in Texas, see Chapter V, p. 85.

1860 it had raised and expended \$1,209,000. Of this sum \$311,700 had been received from the sale of its capital stock. The sum of \$24,000 was donated by the citizens of Colorado, Fayette, Bastrop, Travis, and Wharton counties. Five hundred and eighty-eight thousand eight hundred acres of land donated by the State had been sold for \$106,800, or about 18 cents per acre. A loan of \$420,000 had been obtained from the school fund, and \$232,000 had been secured from parties in Boston for which bonds were issued, and materials and supplies to the value of \$215,000 had been purchased on the company's notes. From these figures it would seem that of the \$1,200,000 expended by the company, \$550,000, or nearly one-half, had been furnished by the State or donated by private individuals.

III. Effects of the War and Reconstruction.

Probably no industry suffers more severely in times of war than do the railways that chance to lie within the range of hostilities. Railway lines, on account of their strategic importance, are frequently the scene of the heaviest fighting and are not infrequently destroyed to prevent them from falling into the hands of the enemy. Most of the railroads of the old South were either badly crippled or entirely ruined by one or another of the contending armies that surged back and forth, with the varying fortunes of war. Fortunately for the industrial welfare of Texas, no hostile army succeeded in effecting an entrance to the State until the hopes of the Confederacy had been abandoned and the home guard had been disbanded. So when the Federal troops finally took possession of the State in 1865, there was no occasion for the destruction of railway property.

In spite of this apparent immunity from the worst consequences of the war, the Texas railroads suffered heavily and the development of a system of transportation facilities was put back for ten or a dozen years. Two of the eleven roads in operation at the beginning of the war were destroyed, one certainly and possibly two roads were abandoned either during the war or soon after its close, while the roadbed and rolling stock of all the others deteriorated very greatly, and practically all the companies were left bankrupt.

The two roads destroyed were the Eastern Texas Railroad and the San Antonio and Mexican Gulf. Most of the iron of the Eastern Texas Railroad was torn up by the Confederate military authorities and used in constructing a fort at Sabine Pass, "the rolling stock of the road being sent off." "A valuable bridge across Taylor's Bayou was destroyed by the United States forces; in a word, the work of construction was completely arrested by the war, the prospects of the company ruined and its property destroyed without fault on its part."³² In 1863 the San Antonio and Mexican Gulf was destroyed by the Confederates under "Rebel General Magruder." The Constitutional Convention of 1868 in an ordinance passed August 25, says: "This wanton and wicked destruction of private property and a great enterprise was owing to the hostility and desire of those then in power to harass and ruin the principal owners or stockholders on account of their well known loyalty and avowed Union sentiments."³³ However, the road was rebuilt by the Federals in 1865-66, and the following advertisement appears in a newspaper of the time: "On and after August 15 (1866), the San Antonio and Mexican Gulf Railroad Company will run daily trains (Sundays excepted) between Victoria and Lavaca. All freight destined for points in the interior will be transported at the rate of ten cents (U. S. currency) per 100 pounds.³⁴ The road was soon in a bad way again, however, and we are told "that owing to the continued rains, it has become impracticable to run the locomotive on the road between Victoria and Lavaca. Mr. Thompson, the Superintendent, is preparing to run light cars by mule power."³⁵ In 1870 the road was sold under foreclosure by the United States Government to satisfy a claim of \$45,000.³⁶

³²Report by W. H. Young, Chairman Committee on Internal Improvements, *House Journal*, 1870, p. 509. The report attributes the financial ruin of the company, in part at least, to the refusal of the State officers in 1861 to turn over the money belonging to the school fund to which the company was entitled by law, "solely on the ground that the vendor of the iron for the road, to whom the claim for the fund had been transferred to pay for the same, was a resident of the city of New York, and therefore an alien enemy to what was then claimed as the Confederate States of America, the State of Texas having seceded from the Union."

³³Gammel, Vol. VI, p. 54.

³⁴*San Antonio Daily Herald*, September 9, 1866.

³⁵*Flake's Commercial Bulletin*, January 16, 1869.

³⁶Poor, *Manual*, 1871-72, p. 434.

The one road certainly abandoned was the Texas and New Orleans, which had just been completed from Houston to Orange in 1861; and it seems altogether probable that train service was abandoned on the Houston Tap and Brazoria Railroad. In a letter to General J. J. Reynolds, Commandant of the Fifth Military District, which embraced Texas, Comptroller M. C. Hamilton, August 17, 1869, says: "It is not even known at this office whether the Texas and New Orleans and the Houston Tap are now organized and operating their roads."³⁷ But, as regards the Texas and New Orleans, Chairman Flanagan of the Committee on Internal Improvements, speaks with more assurance. He says, "The Texas and New Orleans Road is represented to be in very bad condition. The bridge over the Trinity river is stated to be unfit for use, and the road generally in a state of extreme dilapidation. Cars have ceased to pass over it."³⁸ It had been rebuilt to West Liberty prior to 1870 and was reopened to Orange in 1876.

The other roads of the State fared but little better than the four just mentioned. Comptroller Hamilton said in his official report to the Governor: "Most of the railway enterprises became so crippled during the rebellion that they ceased in any sense to be living, organized bodies. No accurate information can be given of their assets, liabilities, or capacity for business. They have ceased to work in the extension of their roads, and it is not known whether they are operating the lines already completed."³⁹ A more detailed description of the condition of the roads may be gathered from the following account of the B. B. B. & C. as given by Mr. Flanagan's Committee on Internal Improvements: "In consequence of the financial derangement produced by the rebellion, and the wearing out of the rolling stock, machinery and roadbeds during its continuance, said company became greatly embarrassed at the close of the rebellion, and were without means, machinery or rolling stock, and a worn-out road on its hands as the results of the war." Several other companies were worse off than this one. Six of the roads were indebted to the State for money loaned to them from the school fund prior to the out-

³⁷*Comptroller's Report, 1867-69, p. 5.*

³⁸*Reconstruction Convention Journal, 1868, p. 270 et seq.*

³⁹*Comptroller's Report, 1867-69, p. 5.*

break of the war. In 1868, the amount of this indebtedness, including principal and arrears of interest, amounted to \$2,203,000.⁴⁰ As it seemed highly improbable that the companies would be able to meet their obligations to the State at any time in the near future, the Convention that framed the Constitution of 1869 ordered the Governor to take possession of the property of the Texas and New Orleans, the Houston Tap, and the Southern Pacific and proceed to sell them.⁴¹ None of the roads were sold in obedience to this ordinance, however, and by a subsequent ordinance the companies were allowed to retain their property upon condition that they make semi-annual payments of interest and one per cent to a sinking fund, on the basis of the amount due on May 1, 1870.⁴² But the Houston Tap and Brazoria was unable to meet these conditions and was sold by the State under foreclosure February 15, 1871. It was purchased by the Houston and Great Northern and consolidated with it by act of May 8, 1873,⁴³ and now forms a part of the International and Great Northern Railroad system, the successor of the Houston and Great Northern.

From what has now been said it is clear that the railroad companies that had begun the work of construction before the Civil War were practically ruined by it, and remained in a condition of utter weakness and bankruptcy throughout the period of reconstruction, until Texas was readmitted to the Union in 1870. To this broad statement one exception must be made in favor of the Houston and Texas Central. While it came out of the war with its road "broken down, dilapidated and unsafe," by 1868 it had been "renewed and made safe, its bridges renewed, stone supports put in place of wooden ones, new ties, new locomotives and cars costing \$209,000 procured, the floating debt taken up, and back interest to foreign and Northern bond-holders and creditors fully

⁴⁰*Reconstruction Convention Journal*, 1868, p. 270 et seq. About the same time the Committee on Education made a report in which the total indebtedness to the State is stated at \$2,576,000. The difference in the statements is due to the fact that the latter committee refused to deduct certain payments made by the companies in depreciated State warrants, the validity of the law under which the payments were made being open to serious question.

⁴¹Ordinance of August 24, 1868, Gammel, Vol. VI, pp. 47-48.

⁴²Ordinance of January 16, 1869, Gammel, Vol. VI, p. 89.

⁴³Gammel, Vol. VII, p. 399.

paid, and the credit of the road built up and established."⁴⁴ It extended its line from Millican to Bryan, thirty miles, in 1867, to Calvert, thirty miles, in 1868, to Corsicana, eighty miles, in 1871, and to its present terminus at Denison by January 1, 1873. In 1867 it acquired control over the Washington County Railroad and was allowed to consolidate with it, by ordinance of August 29, 1868.⁴⁵ In 1872 this branch was extended to Austin, and the same year a branch was opened from Bremond to Waco, under the title of Waco and Northwestern.

Most of this construction took place after 1870, and, with the exception of the Houston and Texas Central, it is believed that the statement is true that the railroads of the State remained in a bankrupt condition until 1870. During this period the mileage had increased from 492 in 1862 to 511 in 1870.⁴⁶

IV. Construction Since 1870.

With the close of reconstruction in Texas and the return of settled business and political conditions, the State entered upon an era of great activity in railroad construction. During the two decades from 1870 to 1890, more than eight thousand miles of railroad were constructed within the State, and our transportation system took on the shape it has since retained. In 1870, there were 500 miles of line in operation in the State; in 1890 there were 8,700 miles in operation. There were times during this period when construction was pushed forward with tremendous energy, as in the years 1881 and 1882 when nearly 2,800 miles of line, or more than 100 miles per month, were opened for traffic. There were other periods when, owing to hard times, or possibly reckless legislation, construction almost came to a standstill, as in

⁴⁴Report of Committee on Internal Improvements, *Reconstruction Convention Journal*, 1868, p. 270 et seq.

⁴⁵Gammel, Vol. VI, p. 58.

⁴⁶In his message to the Legislature, March 29, 1870, Governor E. J. Davis, in speaking of the grants of land and loans from the school fund to the railroads, says: "We have somewhat less than five hundred miles of railroad, which the State has mainly built (but does not own or control) to show for it." (*House Journal*, 1870, p. 21.) And in his message of 1873 he says the mileage in operation at the time of his message in 1871 was 511 miles. (*House Journal*, 1872, p. 39.) These statements do not agree with those usually given, which show a mileage in 1870 of 711.

the two years 1874 and 1875, when only 107 miles were put in operation, or the years 1883 and 1884, when 189 miles were opened for traffic. The small construction in the last named years was due mainly to the repeal of the land grant acts and the reduction of passenger fares from five to three cents per mile, changes made by the Legislature in 1882.

Since 1890 there has been a slow but fairly steady expansion and rounding out of the system that had taken on its main features during the preceding 20 years. The amount of construction during the decade from 1890 to 1900 was quite small, being but slightly in excess of 1000 miles, or an average of a little more than 100 miles per year, against an average of over 500 miles per year during the preceding decade. Several causes have been assigned for this decrease in the rate of construction. Those who oppose the regulation of railways through a board of commissioners have undertaken to show that the decrease followed as a natural result of the commission campaign of 1890 and the organization of the commission in 1891. They point to the fact that the new mileage dropped from 316 miles in 1888, 281 miles in 1889, and 224 miles in 1890, to 92 miles in 1891. But the statistics published by the commission show that the rate of construction quickly recovered from this temporary setback, the new mileage for the years ending June 30, 1892, and 1893, being 162 miles and 272 miles respectively.

Doubtless a far more important cause of the small amount of railroad building during the decade from 1890 to 1900 was the panic of 1893 and the long period of depression that followed it. For several years after the panic of 1893 the roads did not earn enough to keep their physical property in repair. Many of the roads went through receiverships and all of them came out of the hard times in a debilitated condition. The new mileage opened during the period rose from 65 miles in the year ending June 30, 1894, to 137 and 147 miles in 1895 and 1896, and fell to 47 miles and 56 miles in 1897 and 1898, the smallest amounts of construction in any years since 1875, when only 35 miles were opened. The next two years saw an increase to 162 miles and 165 miles respectively.

With the complete return of prosperity in 1900, a new period of activity set in, resulting in the completion of more than 3,000

miles of line up to June 30, 1908, or an average of nearly 400 miles per year. The amount of construction rose to 463 miles in 1902 and 1903, but declined in 1905 to 209 miles. It reached a maximum for the past twenty years during the year ending June 30, 1907, when 517 miles were opened. The panic of October, 1907, did not prevent the completion of the mileage already graded, but it almost completely put a stop to all new enterprises where grading had not been commenced. In spite of this setback, however, the new mileage for the year ending June 30, 1908, amounted to 325.84. The total mileage in the State for that date was 12,901.40 miles, not including some 250 miles of logging roads not classed as common carriers, and 112 miles of interurban electric railway. The thirteen thousand mile mark was passed about November 1, 1908. Although this is a greater mileage than is possessed by any other State in the Union, the fact is not one of particular significance when the size of the State is kept in view.

The following table gives the number of miles of railway in operation in 1854, with the increase in mileage for each year.⁴⁷

<i>Year.</i>	<i>Miles in Operation. Increase.</i>	
1854.....	32	—
1855.....	40	8
1856.....	71	31
1857.....	157	86
1858.....	205	48
1859.....	284	79
1860.....	307	23
1861.....	392	85
1862.....	451	59
1863.....	451	—
1864.....	451	—

⁴⁷The figures in this table are taken from two sources. Those prior to 1891 were compiled by Mr. R. A. Thompson, Engineer to the State Railroad Commission. See his article in *Transactions Texas Academy of Science*, 1900, p. 78. The remaining figures are taken from the annual reports of the Railroad Commission. It will be noted that Mr. Thompson's figures do not exactly agree with those given in the text for the period prior to the war and for the year 1870, based on the quotations from Governor Davis's messages. See pages 34 and 40 above. The apparent decrease after 1891, is due to the fact that the Commission eliminated several logging roads that Mr. Thompson had included in the figures for 1890. Mr. Thompson's figures show an increase of 92 miles for 1891.

<i>Year.</i>	<i>Miles in Operation.</i>	<i>Increase.</i>
1865.....	465	14
1866.....	471	6
1867.....	513	42
1868.....	513	—
1869.....	583	79
1870.....	711	128
1871.....	865	164
1872.....	1,078	213
1873.....	1,578	500
1874.....	1,650	72
1875.....	1,685	35
1876.....	2,031	346
1877.....	2,210	179
1878.....	2,428	228
1879.....	2,591	168
1880.....	3,244	653
1881.....	4,913	1,669
1882.....	6,009	1,096
1883.....	6,075	66
1884.....	6,198	123
1885.....	6,687	489
1886.....	6,925	238
1887.....	7,889	964
1888.....	8,205	316
1889.....	8,486	281
1890.....	8,710	224
1891.....	8,654.15	55.85 ⁴⁸
1892.....	8,816.22	162.07
1893.....	9,088.21	271.19
1894.....	9,153.60	65.39
1895.....	9,290.70	137.10
1896.....	9,437.71	147.01
1897.....	9,484.01	46.30
1898.....	9,540.21	56.20
1899.....	9,702.07	161.86
1900.....	9,867.07	165.00

⁴⁸Decrease.

<i>Year.</i>	<i>Miles in Operation. Increase.</i>	
1901.....	10,153.84	286.77
1902.....	10,616.93	463.09
1903.....	11,080.39	463.46
1904.....	11,536.11	455.72
1905.....	11,744.98	208.87
1906.....	12,058.32	313.34
1907.....	12,575.56	517.25
1908.....	12,901.40	325.84
1909.....	13,277.82	376.42

CHAPTER III.

GROWTH OF THE PRINCIPAL SYSTEMS.

In the foregoing description of railway construction since 1870, no account was given of the construction of the principal lines and the development of the most important systems now operating in the State. An attempt will now be made to give a brief summary history of the dozen or more leading railway systems.

I. The Southern Pacific System.

This is one of the strongest systems in this country, owning and operating more than nine thousand miles of line, extending from New Orleans to San Francisco and Portland, Oregon. The magnitude of such a system may be realized when it is stated that its gross earnings in 1907 were \$124,000,000,¹ while the gross earnings for all the railroads in Texas for the same year were only \$96,000,000.² The Southern Pacific Company is a Kentucky corporation, incorporated in 1884 and beginning business under the Omnibus Lease on March 1, 1885.

The Southern Pacific roads in Texas undoubtedly constitute the strongest group of roads in the State. They have a combined mileage of 2,803 miles, out of a total of a little more than 13,000 miles in the State, or about 22 per cent of the total. Their combined tonnage for 1907 was eleven million tons out of a total of forty-one million tons for the State, or a little over 26 per cent. They show gross earnings of \$25,000,000 out of a total for the State of \$96,000,000.

The following are the Texas lines belonging to the Southern Pacific system:

Galveston, Harrisburg and San Antonio Railway...	1,343 miles
Houston and Texas Central Railroad.....	789 miles
Texas and New Orleans Railroad.....	441 miles

¹*Poor's Manual*, 1908, p. 703.

²Report, Railroad Commission of Texas, 1907, table No. 4.

Houston East and West Texas Railroad (including
the Houston and Shreveport in Louisiana)..... 230 miles

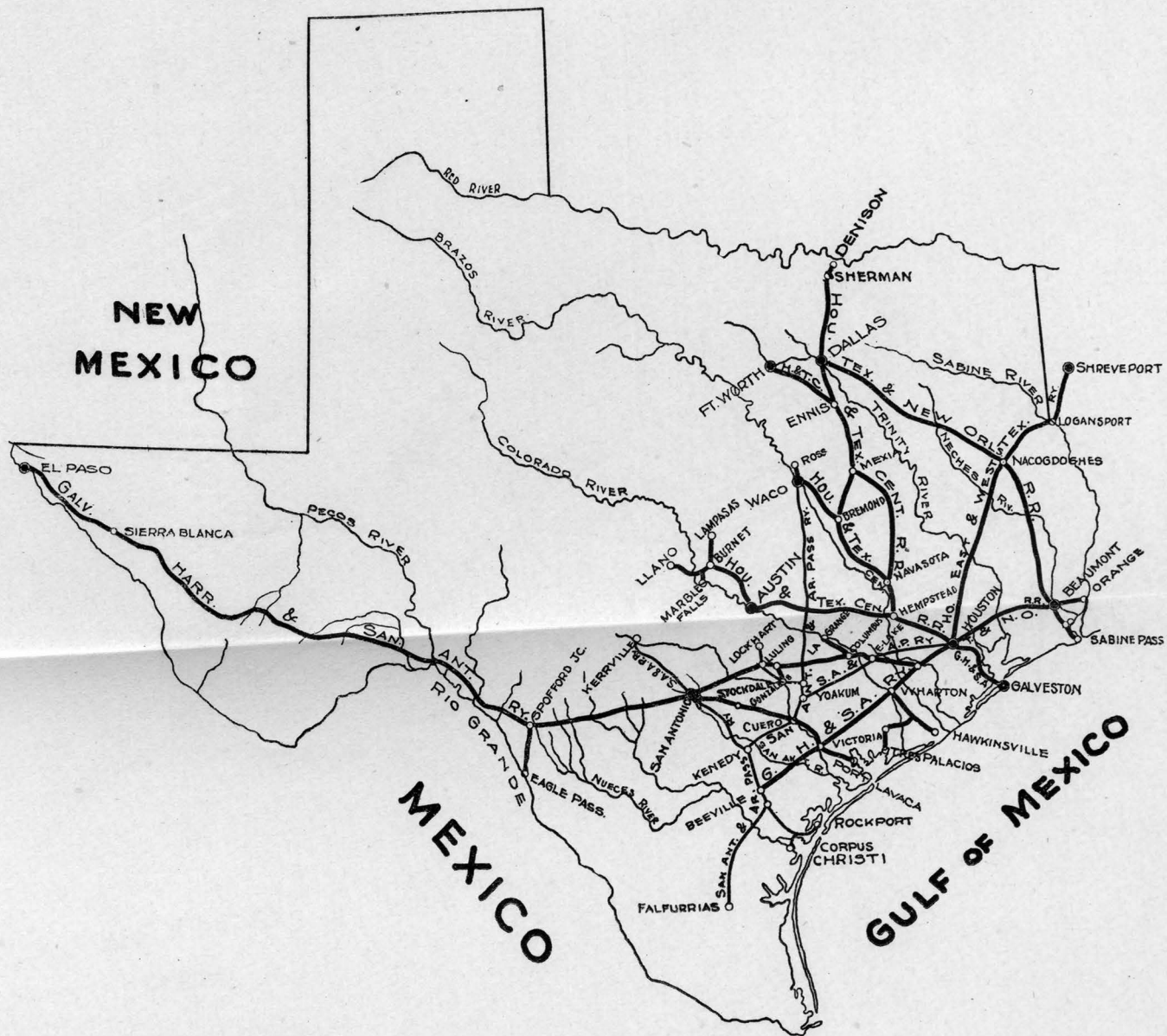
Total..... 2,803 miles

For many years the San Antonio and Aransas Pass Railway was a part of this system, but it has been divorced in obedience to the Railroad Commission's orders, and now claims to be independent.

In addition to these railroad lines, the Southern Pacific owns the Direct Navigation Company, which operates a number of tugs and barges between Houston and Galveston. An account of the four roads will now be given in the order enumerated.

Galveston, Harrisburg and San Antonio. An account has already been given of the construction of this road as the Buffalo Bayou, Brazos and Colorado Railroad, from Harrisburg to Alleyton on the east bank of the Colorado river prior to the Civil War, and of the building of the Columbus Tap Railroad in 1868. After the close of the war, the company was in a bad way financially, and Columbus remained the terminus until 1874. In the meantime the Galveston, Harrisburg and San Antonio Company had been chartered to acquire the property and franchise of the Buffalo Bayou, Brazos and Colorado and the Columbus Tap, and to extend them west by way of San Antonio to El Paso, with branches to Austin and Eagle Pass.³ C. P. Huntington, T. W. Pierce and others interested in the construction of a southern transcontinental railroad now became interested in the road and its extension was pushed with vigor. Construction began in 1874, and the next year the main line reached Luling, 109 miles from Harrisburg. On March 1, 1877, the road was opened to San Antonio, and that important trade center at last formed an outlet to the sea through Galveston, and not through Port Lavaca, as had so long been expected. By 1880 the Southern Pacific had built eastward from the Pacific coast to El Paso, and work now began at both ends of the line to close the gap of 525 miles lying between San Antonio and El Paso. In 1883 the gap was closed. In the meantime, Houston and New Orleans had been connected by rail

³Act of the Twelfth Legislature, approved July 27, 1870, Gammel, Vol. VI, p. 547.



THE SOUTHERN PACIFIC GROUP.

and trains now began to run from San Francisco to New Orleans, thus completing the Southern transcontinental railroad. About this time the Austin branch was completed as far as La Grange, and a branch was built to Eagle Pass, on the Rio Grande.

In 1905 the Galveston, Harrisburg and San Antonio Railway was enlarged by having five roads controlled by Southern Pacific interests consolidated with it. These consolidations took place under authority of an act of the Twenty-ninth Legislature, approved May 3, 1905.⁴ These roads were the New York, Texas and Mexican Railway; the Gulf, Western Texas and Pacific Railroad; the Gonzales Branch Railroad; the Galveston, Houston and Northern Railroad, and the San Antonio and Gulf Railroad. These consolidations were permitted to take place on the condition that the Galveston, Harrisburg and San Antonio Railway Company, before the close of the year 1906, would build a line from Stockdale to Cuero, which was necessary to give San Antonio an outlet at Port Lavaca. The consolidation took place in August and September, 1905, and in August, 1906, the required extension was opened for traffic.⁵

The New York, Texas and Mexican Railroad, frequently called the "Macaroni Road" on account of the fact that a large number of Italian laborers were used in its construction, was chartered in 1880 and was opened from Rosenberg to Victoria, 92 miles, on January 15, 1882. In 1900 it was extended from Wharton to Van Vleck, then to Bay City in 1902, and finally to Tres Palacios on Matagorda Bay in June, 1903. As early as 1885 the Southern Pacific Company acquired a controlling interest in the road, in 1903 holding 96 per cent of the capital stock. As stated above it was consolidated with the Galveston, Harrisburg and San Antonio Railway Company and ceased to exist as an independent corporation August 8, 1905.

The Gulf, Western Texas and Pacific Railway Company was incorporated August 4, 1870, for the purpose of acquiring the

⁴Special Laws of the Twenty-ninth Legislature, p. 502.

⁵It is of interest to note in this connection that the people of San Antonio in 1856 voted a bonus of \$50,000 in city bonds and Bexar county gave another \$50,000 to secure the speedy completion of the San Antonio and Mexican Gulf Railway, so great was their desire for an outlet on Matagorda Bay. An even half century passed before the long-cherished outlet was secured.

old San Antonio and Mexican Gulf Railroad and the Indianola Railroad, whose early history has already been narrated. At the time of their consolidation the San Antonio and Mexican Gulf extended from Port Lavaca to Victoria, twenty-eight miles, and was then building from Port Lavaca to Indianola. The Indianola road extended from Indianola to a connection with the San Antonio and Mexican Gulf road, a distance of fifteen miles. In 1873 the line was extended from Victoria to Cuero, and in 1890 a branch line was built from Victoria to Beeville, fifty-six miles. It had been controlled by the Southern Pacific interests for twenty years prior to its absorption by the Galveston, Harrisburg and San Antonio Railway August 8, 1905.

The San Antonio and Gulf Railroad was an unimportant road extending from San Antonio to Stockdale, a distance of some forty miles. It was first chartered as the San Antonio and Gulf Shore Railway to extend from San Antonio to Velasco at the mouth of the Brazos. In 1893 it was built to Sutherland Springs, twenty-nine miles southeast of San Antonio, and in 1898 was extended to Stockdale. Its acquisition along with the Gulf, Western Texas and Pacific, enabled the Galveston, Harrisburg and San Antonio to complete the San Antonio-Port Lavaca line merely by filling in the gap between Stockdale and Cuero, as explained above.

The Gonzales Branch Railroad, from Harwood to Gonzales, a distance of twelve miles, was built about 1880 as a branch of the Galveston, Harrisburg and San Antonio, but under a separate charter.

The Galveston, Houston and Northern gives the Galveston, Harrisburg and San Antonio Railway an outlet at Galveston over its own tracks. This line was formed by the union of two small lines lying between Houston and Galveston. They were the La Porte, Houston and Northern Railway, from Harrisburg to Thayer, ten miles, built in 1893, and the North Galveston, Houston and Kansas City Railroad, built in 1892, from Virginia Point to Dickinson Junction, twelve miles. They were consolidated as the Galveston, La Porte and Houston Railway in 1895 and the line completed from Houston to Galveston. The road passed through a receivership and was sold to the Galveston, Houston and Northern Company in 1899, and finally consolidated with the Galveston, Harrisburg and San Antonio on September 28, 1905.

This completes a brief sketch of the Galveston, Harrisburg and San Antonio Railway, the oldest and probably the best line physically in the State. The main line is very substantially built and forms an important link in the Southern Pacific system from San Francisco to New Orleans. The company owns and operates 1,340 miles of road in the State, on which the average gross earnings for the year ending June 30, 1907, exceeded nine thousand dollars per mile.

Houston and Texas Central. As previously stated, the Houston and Texas Central was the first company to begin the work of active construction after the close of the Civil War. Between 1867 and 1873 the main line was extended to its present terminus at Denison, and the branches to Austin and Waco were opened in 1871 and 1872 respectively. Thus was opened up to the world for the first time the great fertile region of the Central and Northern portion of the State. The Waco branch, under the name of the Waco and Northwestern, was consolidated with the Houston and Texas Central in 1873 and was operated as a part of it until the latter was placed in the hands of a receiver in 1884. A separate receiver was appointed for the Waco and Northwestern Railroad and it was not again united with the parent company until June 30, 1898, when it was absorbed under authority of an act of 1897.⁶

The Fort Worth branch of the Houston and Texas Central was formed by the absorption of two short roads, the Central Texas and Northwestern extending from Garret to Waxahachie, a distance of twelve miles, and the Fort Worth and New Orleans, extending from Waxahachie to Fort Worth, a distance of forty-one miles. The former was chartered in 1875 as the Waxahachie Tap Railway,⁷ but was rechartered as the Central Texas and Northwestern and the road opened in 1881. The latter was chartered in 1885 to build from Fort Worth to New Orleans, and was opened from Fort Worth to Waxahachie by May, 1886. These two roads were operated as parts of the Houston and Texas Central for many years, and on August 22, 1901, were consolidated with it under authority of an act of the Twenty-sixth Legislature approved May 20, 1899.⁸

⁶Gammel, Vol. X, p. 1304.

⁷Act of Legislature approved January 25, 1875. Gammel, Vol VIII, p. 596.

⁸Gammel, Vol. XI, p. 216.

The act last mentioned also authorized the Houston and Texas Central to purchase and absorb the Austin and Northwestern Railroad and the Lancaster Tap Railroad in Dallas county. The Austin and Northwestern Railroad was chartered in 1881 to build from Austin to Abilene. It was opened as a narrow-gauge to Burnet and to Granite Mountain by January, 1882, and was used for hauling the granite of which the State Capitol was built. In 1889 it was extended to Marble Falls, and Llano in 1892. The Southern Pacific Company acquired a controlling interest in it as early as 1893, and on August 22, 1901, it was absorbed by the Houston and Texas Central, along with the Lancaster Tap, the Central Texas and Northwestern and the Fort Worth and New Orleans. Since that date a branch has been built from Burnet to Lampasas, a distance of twenty-three miles.

The total mileage of the Houston and Texas Central system, including the absorbed lines and the Mexia-Navasota cut-off, which was completed in December, 1906, is now 789 miles. It forms an outlet through Houston and Galveston for all the important cities in the central and northern part of the State, and is one of the best pieces of railroad property in Texas.

Texas and New Orleans. This road was opened from Houston to Orange before the Civil War, but was abandoned during reconstruction days and was not completely rehabilitated until 1876. In 1882 the charter was amended so as to provide for a line from Sabine Pass north to Marshall. The next year it purchased the line of the Sabine and East Texas Railway, extending from Sabine Pass to Rockland, a distance of 103 miles. By an act approved May 22, 1899, the Texas and New Orleans was confirmed in its ownership of the Sabine and East Texas and was allowed to purchase and consolidate with the Texas Trunk Railroad, extending from Dallas by way of Kaufman to Cedar, fifty-three miles, on condition that it build a line from Cedar to Rockland.⁹ The consolidation took place the following December, and in May, 1903, the line from Cedar to Rockland was opened for traffic, thus completing a line from Dallas to deep water at Sabine Pass.¹⁰

Houston East and West Texas Railway. This road was char-

⁹Gammel, Vol. XI, p. 223.

¹⁰The Texas Trunk Railroad was chartered in 1879, and opened to Kaufman in 1881 and finally extended to Cedar, in Kaufman county, in 1883.

tered by an act of the Legislature approved March 11, 1875, Paul Bremond, T. W. House, W. J. Hutchins, W. D. Cleveland, Eugene Pilott, John Shearn, and other well known Houston business men being among the incorporators.¹¹ The plan was to build two lines out of Houston, one to the Red River in Bowie county, with branches to the Sabine through Jasper county and through Shelby county to Logansport, the other westward through Victoria and Beeville to Laredo, with a branch to Corpus Christi Bay. Construction began in 1876, and the road was opened to Goodrich, sixty-two miles, in 1879; to Moscow, eighty-seven miles, in 1880; to Burke, 110 miles, in 1881; to Nacogdoches, 138 miles, in 1882, and to the Sabine river opposite Logansport, 192 miles, by December 1, 1885. A Louisiana company, the Shreveport and Houston Railway Company, was then organized by the promoters for the purpose of building from Shreveport to a connection at Logansport. The bridge across the Sabine was completed in January, 1886, and the through service from Houston to Shreveport was inaugurated. There has been no further construction. The road began as a narrow gauge, but was standardized in 1894. More than 99 per cent of the capital stock is held by the Southern Pacific Company.

II. The Gould Group.

The Gould group of roads center about the Missouri Pacific Railroad, which has a network of lines west of St. Louis and Kansas City. The Wabash furnishes an outlet from St. Louis to Chicago, Buffalo, and other Eastern centers. The most important line lying southwest of St. Louis is the St. Louis, Iron Mountain and Southern Railway, which connects at Texarkana with the Gould roads in Texas. The Texas roads are controlled by the Iron Mountain Company, which in turn is dominated by the Missouri Pacific.

The Gould roads in Texas are, next to the Southern Pacific group, the most important group of roads in the State. The mileage is slightly larger than that of the Southern Pacific group, but the gross earnings are a little smaller and their tonnage is considerably less. The following are the Gould roads and their mileage within the State:

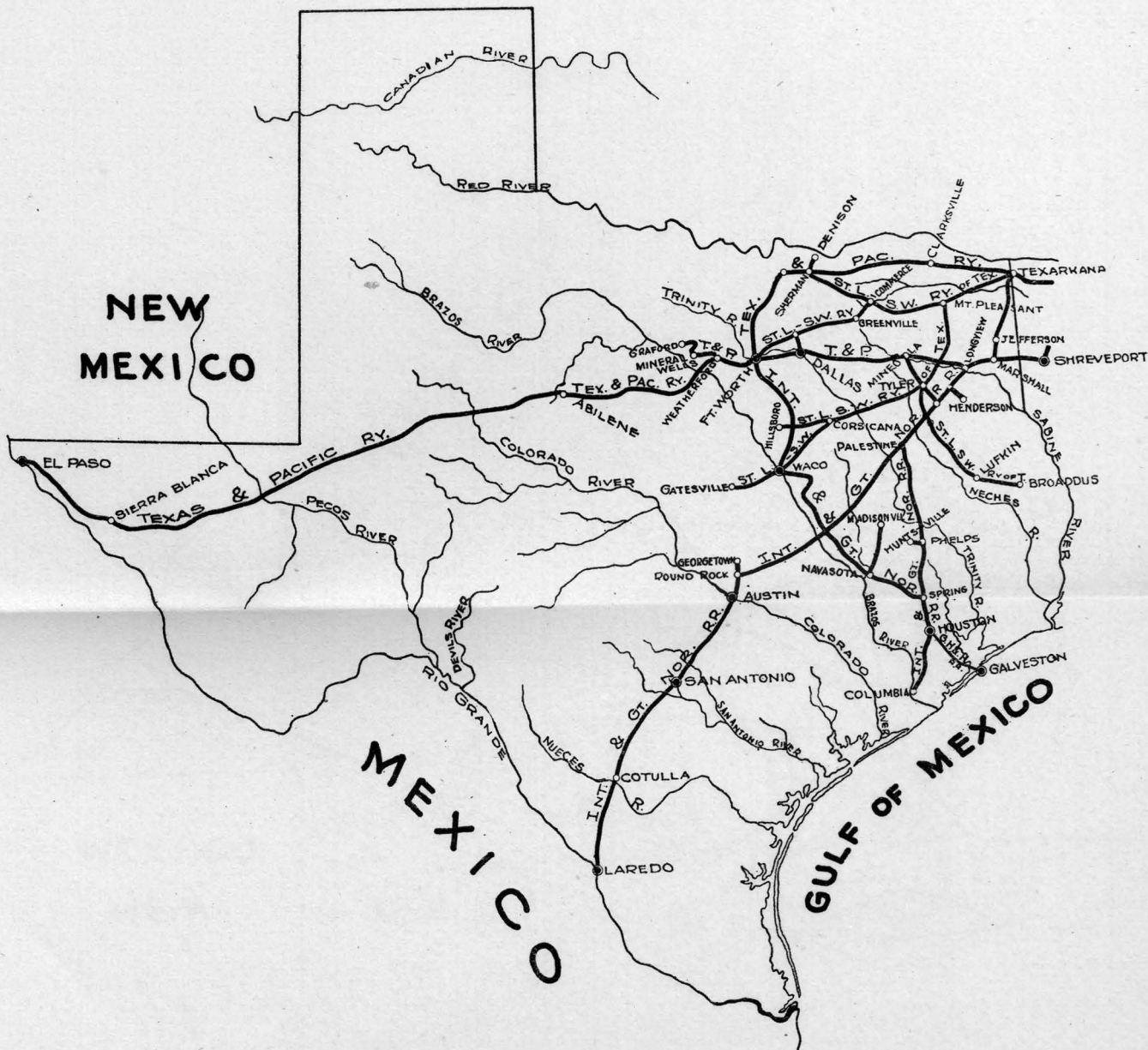
¹¹Gammel, Vol. VIII, p. 676.

Texas and Pacific Railway (in Texas).....	1,038 miles
'(mileage in Louisiana 761 miles)	
International and Great Northern Railroad.....	1,106 miles
Galveston, Houston and Henderson Railroad (one-half interest).....	46 miles
St. Louis Southwestern Railway of Texas.....	681 miles
Weatherford, Mineral Wells and Northwestern Railway	44 miles
Denison and Pacific Suburban Railway.....	8 miles
Total.....	2,923 miles

For a number of years during the eighties the Gould group of roads was relatively a more important factor than it is now, for, in addition to the roads just enumerated, the Missouri, Kansas and Texas Railway was owned by the Missouri Pacific and operated by it under a lease. The Missouri Pacific also operated the International and Great Northern, which was owned by the Missouri, Kansas and Texas Company, and leased to it. In operating these two lines, the Missouri Pacific virtually dismembered the International and Great Northern and created two north and south lines out of its fragments. One through line extended from St. Louis to Houston by using the Iron Mountain to Texarkana, the Texas and Pacific to Longview, and the International and Great Northern from Longview by way of Palestine to Houston. The other was formed by the use of the Missouri, Kansas and Texas tracks to Taylor, and then the tracks of the International and Great Northern from Taylor to Laredo. The portion of the line lying between Palestine and Taylor was used only as a local line and was allowed to fall into great disrepair. However, the lease contracts were cancelled in 1888 and the Missouri Pacific company withdrew from the State as a result of a suit brought by Attorney General Hogg to forfeit the charter of the International and Great Northern Company, for allowing its tracks to get into a dangerous condition and for failure to maintain general offices in the State as required by law.¹²

Texas and Pacific. While the Galveston, Harrisburg and San

¹²International and Great Northern Railroad Company. vs. The State, 75 Texas, 356.



THE GOULD GROUP.

Antonio Railway was being pushed across the southern part of the State to a connection with the Southern Pacific at El Paso, the Texas and Pacific was supplying the northern part of the State with an east and west line of almost equal importance. The latter road was formed by the consolidation of the Memphis, El Paso and Pacific Railway, the old Southern Pacific Railway, and the Southern Transcontinental Railway. The history of the Memphis and El Paso and of the Southern Pacific for the period prior to the Civil War has already been given.¹³ The work of construction was resumed by the Memphis, El Paso and Pacific in 1869, and, in 1870, 100 miles was opened for traffic.¹⁴ In July, 1870, the Southern Transcontinental Railway was incorporated to build along the route surveyed by the Memphis, El Paso and Pacific, and was given the right to purchase the property and franchises of that company.¹⁵ In order to secure the speedy construction of a railroad across the State to the Pacific Ocean, an act was passed by the Legislature, in 1871, granting \$6,000,000 in bonds to the Southern Pacific and the Southern Transcontinental companies.¹⁶ By the same act these companies were authorized to sell out to and consolidate with the Texas Pacific Railroad Company, a corporation created by special act of Congress March 3, 1871. The consolidation took place in March, 1872, and the name of the company was changed to Texas and Pacific Railway Company. The road was to extend from the eastern border of Texas to the Pacific Ocean, and Congress offered twenty sections of land for every mile built in California and forty sections for every mile built in crossing Arizona and New Mexico. The moving spirit in the enterprise was Colonel Thomas A. Scott, of the Pennsylvania Railroad, and the work of construction began in earnest. In 1873 the main line was opened from Longview to Dallas, 124 miles, and the Transcontinental branch was built eastward from Sherman to Brookston, a distance of fifty-six miles. In spite of the hard times that followed, the Jefferson branch from Marshall to Texarkana, sixty-nine miles, was opened prior to 1875,

¹³See pages 32 and 33.

¹⁴Thompson, *Trans. Tex. Acad. Sc.*, 1900, p. 69.

¹⁵Gammel, Vol. VI, p. 542.

¹⁶Act of Twelfth Legislature, passed May 24, 1871, Gammel, Vol. VI, p. 1623. This act was passed over the veto of Governor Davis. Lands were afterward substituted for the bonds. See page 94 below.

and, in 1876, the main line reached Fort Worth and the Transcontinental branch was completed from Texarkana to Sherman. In 1880 the latter branch was built from Sherman, by way of Whitesboro, to a junction with the main line at Fort Worth. Construction on the western extension was pushed rapidly during the years 1880 and 1881, and on January 1, 1882, a connection was made at Sierra Blanca with the Galveston, Harrisburg and San Antonio, which was building eastward from El Paso. Although the line was graded from Sierra Blanca to El Paso, an agreement was made by which the Texas and Pacific secured the right to use the track of the Galveston, Harrisburg and San Antonio, and the rails on its own line were never laid. In 1881, the Texas and Pacific Railway Company acquired the New Orleans Pacific Railway, by an exchange of stock, dollar for dollar. This line extended from New Orleans to Shreveport, a distance of 335 miles, and gave the Texas and Pacific a direct line from New Orleans to El Paso.

In 1908 the Texas and Pacific Railway Company owned 1,038 miles of line in Texas and 761 in Louisiana. It had trackage rights over the ninety-two miles between Sierra Blanca and El Paso. In addition the company controlled two small roads in the State, the Denison and Pacific Suburban Railway, connecting Denison and Sherman, and the Weatherford, Mineral Wells and Northwestern. The former was opened in 1896. The latter was completed from Weatherford to Mineral Wells, twenty-three miles, in 1890, and during 1907 was opened to Graford, in Young county, twenty-one miles. The Texas and Pacific owns 94 per cent of its capital stock, and guarantees its outstanding bonds.

International and Great Northern. Texas has several roads that cross the State from north to south and two that extend entirely across it from east to west, but the International and Great Northern is the only road that crosses the State from the northeast to the southwest. This road was formed by the consolidation of the International Railroad and the Houston and Great Northern Railroad, September 23, 1873. The latter company was incorporated in 1866 to build a line from Houston by way of Huntsville and Tyler to the Red River at or near Clarksville.¹⁷ Construction began at Houston in 1870, and was completed to the Trinity

¹⁷Act approved October 22, 1866, Gammel, Vol. V, p. 1396.

river, eighty-six miles, in 1871, and to Palestine, 151 miles, in 1872. In 1870, the Houston and Great Northern purchased and consolidated with the Houston Tap and Brazoria, extending from Houston to Columbia on the Brazos, a distance of fifty miles.¹⁸

The International Railroad Company was incorporated by act approved August 5, 1870, to build from a point on Red River opposite Fulton, Arkansas, by way of Austin and San Antonio to Laredo on the Rio Grande.¹⁹ Construction began at Hearne on the Houston and Texas Central in 1871, and by May of the same year the road was completed to the Trinity river near Palestine, seventy-eight miles, and in December of the following year the line was opened to Longview, 141 miles. After the consolidation in 1873, the line was built southward from Hearne to Rockdale, thirty miles, in January, 1874, and, in 1876, to Austin, sixty-one miles from Rockdale. Austin remained the southern terminus until in the early eighties, when the road was extended to San Antonio and Laredo, where it connects with the Mexican National Railroad. In 1874 the branch from Troupe through Tyler to Mineola on the Texas and Pacific, a distance of forty-four miles, was opened for traffic. During this period a short branch was built from Phelps to Huntsville, and what is now the branch from Overton to Henderson, and the one from Round Rock to Georgetown, were built by separate companies.

In 1903 the Fort Worth branch was completed, giving the International and Great Northern a direct line from Fort Worth to Houston. This branch was first chartered in June, 1899, as the Calvert, Waco and Brazos Valley Railroad, under which name it was completed from Marlin to Bryan, a distance of sixty-one miles. In 1901, this road was purchased and consolidated with the International and Great Northern, under authority of an act approved February 12, 1901.²⁰ In 1902 it was extended southward from Bryan to Spring, a point on the Palestine-Houston branch a few miles north of Houston. The following year it was extended

¹⁸For the early history of this line, see pages 30 and 39.

¹⁹Act of Twelfth Legislature, passed August 5, 1870, Gammel, Vol. VI, p. 606. The act provided for a grant of State bonds to the amount of \$10,000 per mile, but in 1875 a compromise act was passed granting the company twenty sections of land per mile in lieu of the bonds. For a full account of this transaction, see pages 92 to 95.

²⁰Gammel, Vol. XI, p. 1056.

northward from Waco to Fort Worth, a distance of ninety-five miles.

In 1883 the International and Great Northern secured an outlet from Houston to Galveston by leasing the Galveston, Houston and Henderson Railroad for a period of ninety-nine years.²¹ In 1895 this lease was surrendered and trackage rights over the latter road for a period of forty years was granted to the International and Great Northern, jointly with the Missouri, Kansas and Texas, these roads being the joint owners and enjoying equal trackage rights over the leased line.²²

While the International and Great Northern is an important road, embracing ~~it~~ it does some 1,106 miles of track located in the central portion of the State, it seems to have been poorly managed. It has passed through several receiverships and reorganizations, and is now (June, 1909) in the hands of a receiver, being the only important line in the State for several years past that has been unable to meet its interest payments. In 1881 this road was purchased by the Missouri, Kansas and Texas Railway Company and for several years was operated, along with that company's lines, by the Missouri Pacific Railway Company.

St. Louis Southwestern Railway. This road, commonly known as the Cotton Belt, extends from St. Louis and Cairo, Illinois, through the State of Arkansas, to Gatesville, Texas, with branches to Sherman, Dallas, Fort Worth, Hillsboro and Broadus in the southeastern part of the State. The portion of the line lying within the State of Texas is owned and operated by a Texas company known as the St. Louis Southwestern Railway Company of Texas. This company operates (1907) a total of 681 miles, distributed as follows:

Main line—Texarkana (via Tyler, Corsicana and Waco	
to Gatesville).....	305 miles
Sherman Branch, Commerce to Sherman.....	52 miles
Fort Worth Branch, Mount Pleasant to Fort Worth..	154 miles

²¹For the early history of the Galveston, Houston and Henderson Railroad, see page 29.

²²The stock of the Galveston, Houston and Henderson, amounting to \$1,000,000, is held to the amount of \$500,000 by each of the two leasing companies. The rental is \$124,000 annually, or \$62,000 for each company.

Dallas Branch, Noell Junction to Dallas.....	14 miles
Hillsboro Branch, Corsicana to Hillsboro.....	40 miles
Lufkin Branch, Tyler to Broadus in San Augustine county.....	115 miles

The road began in Texas as the Tyler Tap Railroad, chartered by an act approved on December 1, 1871, to build a line to a connection with either the Southern Pacific (Texas and Pacific) Railroad, the Houston and Great Northern Railroad, or the International Railroad, at a point not more than forty miles from Tyler.²³ R. B. Hubbard, afterwards Lieutenant Governor, W. S. Herndon, and a large number of other prominent men of Tyler were interested in the enterprise. The road was opened from Tyler to Ferguson, twenty-one miles, in 1871, the gauge being three feet. It reached Mount Pleasant in 1878. The next year the old company was succeeded by the Texas and St. Louis Railway Company, which was given authority to extend the line eastward to Texarkana and westward to the Rio Grande. By the close of the year 1880 the road had been pushed westward to the Trinity river, and in 1881 it was completed to Waco, 260 miles. In 1882 it reached Gatesville, its present western terminus, while the line from Bird's Point, Missouri, opposite Cairo, to Texarkana was completed the following year.

The road lost money from the beginning and in 1884 it was placed in the hands of a receiver. Two years later it was sold under foreclosure and two new companies were organized to take it over, one in Texas and the other in Arkansas and Missouri, both bearing the name St. Louis, Arkansas and Texas Railway Company. One of the first things undertaken by the new company was the broadening of the gauge of the road, which was accomplished on all the line, except the Tyler and Southeastern, at a cost of \$2,600,000. During 1887 and 1888, the branches to Sherman, Fort Worth, and Hillsboro were completed. The Dallas branch was opened in 1903, though for several years prior to that date the road had secured an entrance into Dallas over the tracks of the Santa Fe.

The Lufkin branch was first chartered as the Kansas and Gulf Short Line Railroad, in 1880, and was opened to Lufkin in 1882.

²³Gammel, Vol, VII, p. 319.

In 1887 it passed into the hands of the St. Louis, Arkansas and Texas Company. In 1890, the entire system was again sold under foreclosure, and three companies were organized to take over the property. The St. Louis Southwestern Railway Company assumed control of the lines outside of Texas, the St. Louis Southwestern Railway Company of Texas took control of all the Texas lines, except the Lufkin branch, which was turned over to the Tyler and Southeastern Railway Company. The latter company maintained an independent existence until 1899, when it was absorbed by the St. Louis Southwestern Railway Company of Texas, and the line extended to Warsaw and Broadus in 1903, and to White City in 1908.²⁴

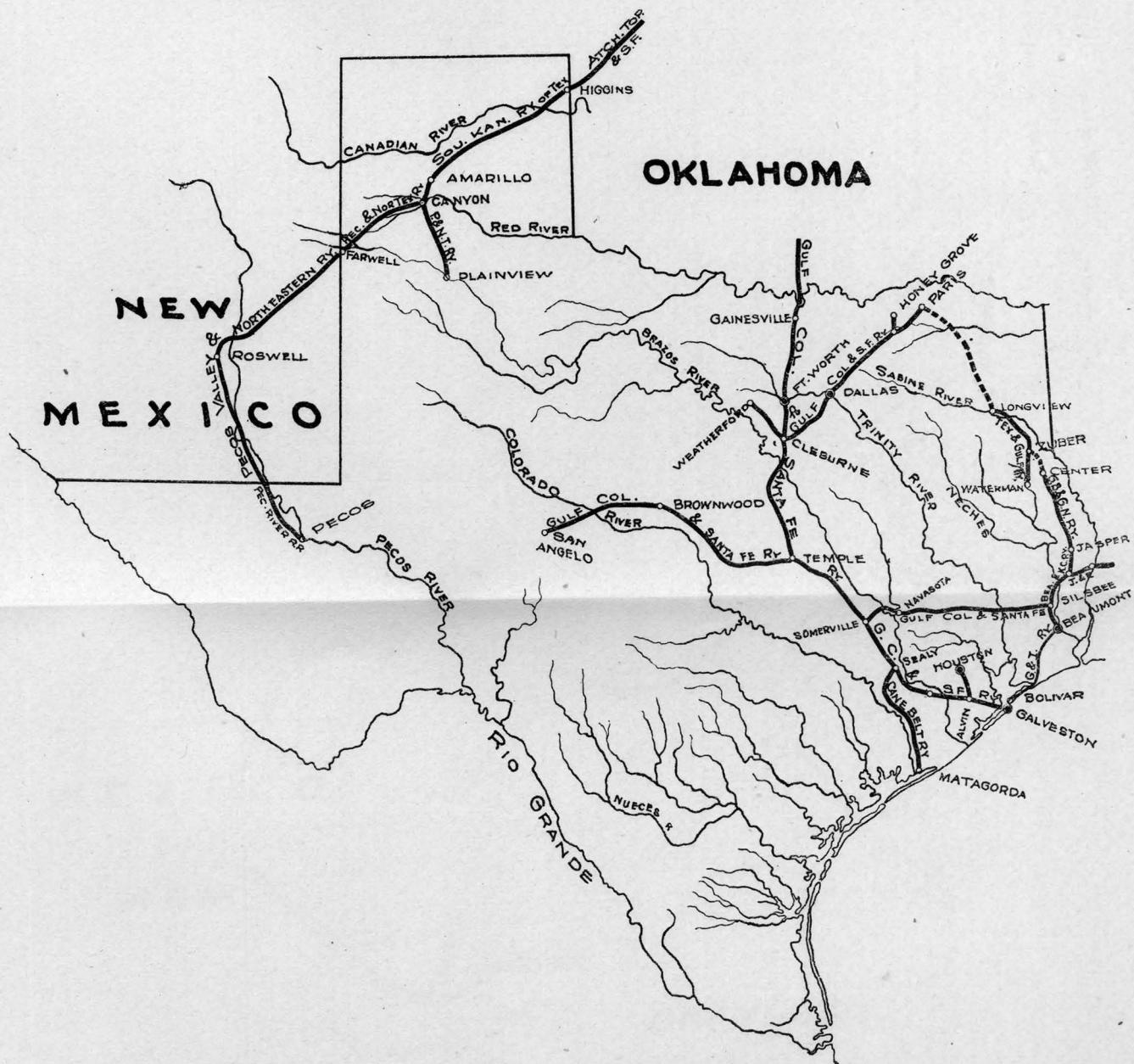
III. The Santa Fe System.

The Gulf, Colorado and Santa Fe Railroad is the principal Texas branch of the great Atchison, Topeka and Santa Fe system, which owns more than 9,000 miles of railway extending from Chicago to San Francisco on the Pacific coast, and to Galveston on the Gulf of Mexico. On June 30, 1907, this Texas company owned and operated 1049 miles of line, while nine other companies controlled by Santa Fe interests brought the total mileage within the State up to 1776 miles.

Originally the Gulf, Colorado and Santa Fe was not connected with the Atchison system, but was begun by the citizens of Galveston as a feeder for that city. Galveston at that time had no outlet to the interior which did not pass through Houston, and her trade was greatly hampered by the strict yellow fever quarantine which Houston enforced against her during the summer and fall months of almost every year. The Santa Fe road was projected for the purpose of evading these troublesome restrictions and of bringing the interior traffic directly to the wharves at Galveston.

The road was incorporated, May 23, 1873, to build a line from Galveston by way of Caldwell, Cameron, Belton, and Eastland, to the Canadian river in the Panhandle country, then up that

²⁴The Tyler and Southeastern was absorbed under authority of an act of the Twenty-sixth Legislature, passed May 10, 1897. Gammel, Vol. XI, p. 222.



THE SANTA FE SYSTEM.

stream to the State line and on to Santa Fe, New Mexico.²⁵ Grading began at Virginia Point in 1875 and the line was opened to Arcola on the Brazos, forty-five miles, in 1876, and two years later to Richmond. In 1878, the company had realized \$800,000 from the sale of stock, and \$1,075,000 had been donated by counties, towns and individuals along the route.²⁶ The directors elected in 1878 were M. Kopperl, James Sarley, H. Rosenberg, R. S. Willis, J. E. Wallis, C. B. Lee, Walter Gresham, W. S. Moody, Julius Runge, H. Kempner, C. W. Hurley, H. Marwitz, and C. E. Richards, all men prominent in Galveston business circles.

In 1879 the company became financially embarrassed and underwent a reorganization. The new company was able to secure plenty of funds, however, and the work of construction was pushed vigorously. Brenham was reached in 1880 and Belton, 226 miles from Galveston, in February, 1881. During the same year the entire line from Temple to Fort Worth was completed and opened for traffic. In May, 1882, what was then looked upon as the main line was extended to Lampasas; and in the same year the eastern branch—formerly the Central and Montgomery Railroad, extending from Navasota to Montgomery—was purchased and put in operation.²⁷ In 1883-1884, 106 miles of line were added to the system as follows: 1, a line was opened from Somerville on the main line to Navasota, twenty-eight miles, to a junction with the Central and Montgomery, which was acquired the previous year; 2, a branch was built from Alvin to Houston, twenty-four miles, and 3, the Chicago, Texas and Mexican Central was purchased and completed from Cleburne to Dallas. In 1885, the main line was extended from Lampasas to Brownwood, seventy-one miles, and the eastern branch was built to a junction with the International and Great Northern at Conroe, eighteen miles from Montgomery.

In 1886, control passed to the Atchison system, and during the next two years the Fort Worth branch was built to a connection with the Atchison system at Purcell on the Canadian river in Oklahoma, and, from this time on, became known as the main

²⁵Gammel, Vol. VII, p. 1302.

²⁶*Poor's Manual*, 1878.

²⁷This purchase was ratified and confirmed by act of the Legislature approved March 27, 1887. Gammel, Vol. IX, p. 1323.

line. The western branch was extended to Ballinger in 1886 and to San Angelo, the present terminus, in the following year. The Dallas branch was extended to Honey Grove in 1886 and to Paris, the present terminus, in 1887. In the latter year a line was opened from Cleburne to Weatherford, a distance of forty-two miles. On April 11, 1905, an act was approved allowing the Santa Fe to purchase or lease the Cane Belt Railroad,²⁸ and it was taken over under lease contract on July 1, 1905. This road was chartered in 1898, and opened from Sealy to Matagorda at the mouth of the Colorado river in 1903.

Since 1887, the only expansion of the Gulf, Colorado and Santa Fe, aside from the acquisition of the Cane Belt, has taken place in the eastern part of the State, where the company is making an effort to establish, by means of consolidation and construction, a through line from the Red River to Galveston—a line very much needed by the timber belt of East Texas. The steps in the process seem to be as follows: By an act passed March 31, 1897,²⁹ the Santa Fe was authorized to purchase and extend the Texas, Louisiana and Eastern Railroad, a line extending eastward from Conroe to a point near the Trinity river. The road was extended to Kountze on the Texas and New Orleans and then to Silsbee on the Gulf, Beaumont and Kansas City Railway. The company then purchased a controlling interest in four small north and south roads and is seeking to weld them together into a through line. These roads are the Gulf and Interstate Railroad, extending from Bolivar Point, opposite Galveston, to Beaumont; the Gulf, Beaumont and Kansas City Railway, extending from Beaumont northward to Rogan; the Gulf, Beaumont and Great Northern Railway, extending from Rogan to Center; and the Texas and Gulf Railway, from Longview on the Texas and Pacific to Watterman in Shelby county, some twenty miles from Center. Now, if the company were allowed to consolidate these lines into one and fill the gap between Center and Watterman, or some point further north on the Texas and Gulf, as Zuber, the through line could be completed by the construction of a line from Longview to the Red River. Accordingly the Legislature was asked to permit the consolidation to

²⁸Special Laws, Twenty-ninth Legislature, p. 317.

²⁹Gammel, Vol. X, p. 1147.

take place. By an act approved March 30, 1903, the Santa Fe was allowed to absorb the Gulf, Beaumont and Kansas City and the Gulf, Beaumont and Great Northern.³⁰ On April 11, 1907, a bill was passed over the Governor's veto, allowing the Santa Fe to consolidate with the Texas and Gulf Railway, on condition that the gap between Watterman and Center be closed and the line from Longview to the Red River be completed within three years.³¹ The line from Center to Zuber is now about complete, but as yet no work has been done on the line north of Longview. The Legislature refused to allow the absorption of the Gulf and Interstate, but it is still controlled by the Santa Fe, and is operated under a lease.³²

The other lines controlled by the Atchison system are the Southern Kansas Railway of Texas, extending from the Oklahoma State line to Amarillo, 115 miles; the Pecos and Northern Texas, extending from Amarillo to the New Mexico State line, with a branch from Canyon to Plainview, 152 miles, and the Pecos River Railroad, from the New Mexico line to Pecos on the Texas and Pacific, fifty-four miles, all parts of the through line from Anthony, Kansas, to Pecos, Texas.

IV. The Missouri, Kansas and Texas System.

The lines of this road lying within the State of Texas are parts of a system of some 3000 miles frequently referred to as the Katy System, which has St. Louis, Hannibal, and Kansas City for its northern terminal points and San Antonio and Houston for its southern extremities. The parent company was incorporated under the laws of the State of Kansas, and by an act of the Texas Legislature, approved August 2, 1870, it was authorized to build a line across the State from the Red River near Denison by way of Waco and Austin to the Rio Grande, with a view of ultimately extending to the City of Mexico.³³ During the early seventies it built and consolidated a number of lines in Kansas, pushed across the In-

³⁰Special Laws Twenty-eighth Legislature, p. 252.

³¹General Laws, Thirtieth Legislature, p. 178.

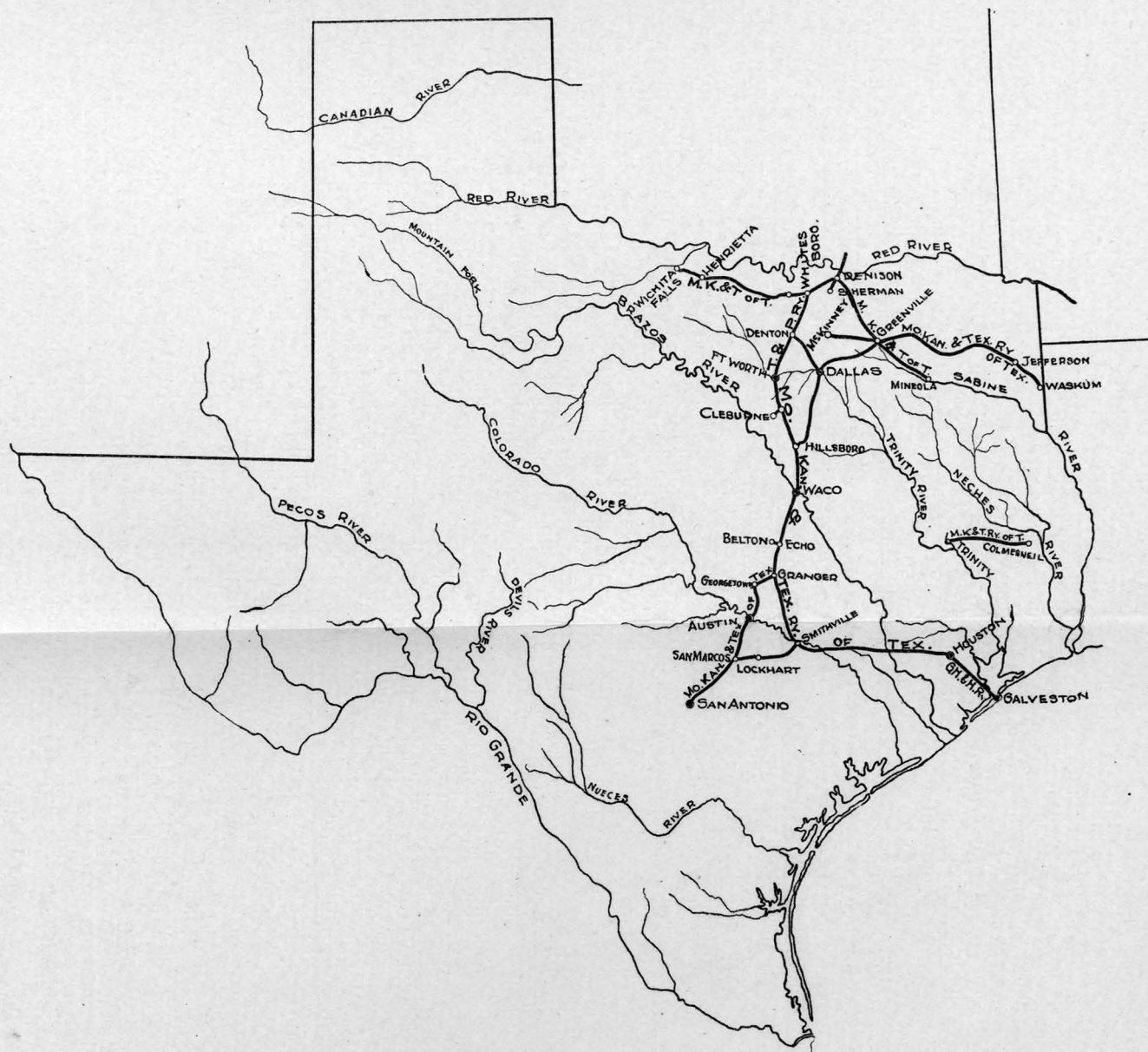
³²The Gulf and Interstate was built in 1896, but was almost completely destroyed by the hurricane of September 8, 1900. It was reopened in 1903. The loaded cars are ferried across the bay and are unloaded at the wharves in Galveston.

³³Gammel, Vol. VI, p. 565.

dian Territory to the Red River, and by 1880 had begun the work of building up its Texas system. At present the principal Texas lines of the system are as follows: 1, the main line extending from Denison by the way of Fort Worth, Waco, Taylor, and Smithville to Houston; 2, a branch from Denison through Greenville to Mineola and Grand Saline on the Texas and Pacific; 3, a branch from Dallas to Greenville; 4, a branch from Whitesboro by way of Gainesville and Henrietta to Wichita Falls; 5, the old East Line and Red River Railroad from McKinney to Jefferson, which has been extended to Shreveport; 6, a branch leaving the main line at Denton, passing through Dallas, and connecting with the main line again at Hillsboro; 7, a branch from Smithville by way of Lockhart and San Marcos to San Antonio; 8, a branch from Granger, by way of Georgetown, to Austin, which is extended to a connection with the San Antonio branch at San Marcos by the use of the tracks of the International and Great Northern from Austin to San Marcos; and 9, a detached line in East Texas, extending from Trinity on the International and Great Northern to Colmesneil on the Texas and New Orleans—a total of 1121 miles of line. The portion of the main line between Whitesboro and Fort Worth is owned by the Texas and Pacific and is operated jointly by the two companies. An outlet from Houston to Galveston is obtained over the tracks of the Galveston, Houston and Henderson which, as previously explained, is owned and leased jointly by the Missouri, Kansas and Texas and the International and Great Northern.

The Missouri, Kansas and Texas system in Texas was built up very largely by a process of consolidation, a large number of small lines being bought out and welded into a strong system. Prior to 1880 two short lines had been acquired. They were the Denison and Southeastern, which was opened from Denison to Greenville, fifty-two miles, in 1877-78, and the Denison and Pacific from Denison to Gainesville, forty miles. By 1884, the main line had been constructed from Fort Worth to Taylor, with a branch to Belton, and the Greenville branch had been built to Mineola, fifty-one miles. During the same year the company acquired the Dallas and Wichita Railroad, which was chartered December 2, 1871,³⁴ and opened to Lewisville, in 1874, and to Den-

³⁴Gammel, Vol. VII, p. 351.



THE MISSOURI, KANSAS AND TEXAS LINES.

ton, forty miles, in 1880. A more important acquisition made at this time was the narrow gauge line known as the East Line and Red River Railroad, built by the people of Jefferson as far west as Greenville, 124 miles, in 1876, in an effort to hold the trade of this region for that important trade center. It was now extended as a broad gauge to McKinney. In 1887, the line from Dallas to Greenville was opened by the Dallas and Greenville Railroad Company, a subsidiary of the Missouri, Kansas and Texas, while the Taylor, Bastrop and Houston, another subsidiary company, which had built the main line from Fort Worth to Taylor, extended it to Boggy Tank, a few miles east of Fayetteville, and also opened the line from San Marcos to Lockhart. During the same year another subsidiary company, the Gainesville, Henrietta and Western, opened the line from Gainesville to Henrietta, seventy miles. In 1890, the Missouri, Kansas and Texas acquired the Dallas and Waco Railroad, which had been chartered in 1886, and opened to Waxahachie in 1889 and to Milford in 1890, and the next year completed it to a connection with the main line at Hillsboro. The line from Lockhart to Smithville, thirty-seven miles, was opened in 1892, and in March of the following year the main line reached Houston.

In 1880, the Missouri Pacific Company acquired a controlling interest in the Missouri, Kansas and Texas and took it over, and for eight years operated it under a lease contract. In 1881, the Missouri, Kansas and Texas acquired control of the International and Great Northern by the exchange of two shares of its own stock for one of the latter. This arrangement continued until 1888, when the leases were cancelled, and the Missouri, Kansas and Texas lines were again operated by their own company. In the fall of that year the company was placed in the hands of receivers and remained there until July 1, 1891, by which time a complete reorganization of the company had taken place. In October of that year the Kansas Company transferred all the Texas lines to the Missouri, Kansas and Texas Railway of Texas, which was organized for the purpose, under the authority of an act approved April 16, 1891.³⁵

At the time of the reorganization in 1891, the old East Line and Red River road was separated from the rest of the system and placed in the hands of an independent company, the Sherman,

³⁵Gammel, Vol. X, p. 348.

Shreveport and Southern Railway Company. Its gauge was broadened and it was operated as a separate road until May 7, 1901, when it was again consolidated with the Missouri, Kansas and Texas system.³⁶ Since that time the line has been built to Waskom on the State line, and the line of the old Vicksburg, Shreveport and Pacific from Waskom to Shreveport has been leased, giving the Missouri, Kansas and Texas an entrance into Shreveport. On May 3, 1901, the line from San Marcos to San Antonio was opened for traffic. In February, 1903, the line from Granger to Georgetown, fifteen miles, built by the Granger, Georgetown, Austin and San Antonio Railway Company, was acquired, and in June of the same year it was completed to Austin.

V. San Antonio and Aransas Pass Railway.

This road was an enterprise fathered by the business men of San Antonio, and intended to carry out the long cherished plan for a direct railroad outlet to the sea. The first president of the road was Uriah Lott, in recent years prominent in connection with the construction of the St. Louis, Brownsville and Mexico Railway, and among the early directors are the names of George W. Brackenridge, A. Belknap, A. C. Schryver, B. F. Yoakum, W. H. Maverick, and Henry Elmendorf.

The road was first chartered in 1884 to build from San Antonio to Aransas Pass, but the charter was afterward amended so as to allow a line to be built through Houston towards Shreveport with a branch to Waco and another to Austin, another line northwestward from San Antonio, and still another line to Laredo, with a branch to Corpus Christi. Track laying began in 1885 and was pushed with great energy. The road was completed to Beeville, ninety-eight miles, in 1886, and by June 1, 1887, the Kerrville branch had reached Boerne, another branch had been opened to Corpus Christi, and still another from Kenedy Junction to Cuero. Within the next two years the road was completed to Kerrville on the north and Houston on the east, with a branch from Kenedy to Corpus Christi, ninety miles, and had completed fifty miles from Yoakum to West Point on the Waco branch, and

³⁶Under authority of an act approved May 16, 1899, Gammel, Vol. XI, p. 240.

forty-three miles from Skidmore to Kleberg, on the Brownsville division, a total of 518 miles. In 1890 construction on the Waco branch was pushed northward from West Point to Lexington, thirty-six miles, and southward from Waco to Lott, twenty-eight miles. The next year the gap of fifty-eight miles was filled in and the Waco branch was complete. In 1890-91 the Austin branch was built from a point near Shiner in Lavaca county, through Gonzales and Luling to Lockhart, which for some reason has remained the terminus to the present time.

In July, 1890, the company defaulted in its interest payments and B. F. Yoakum and J. S. McNamara were appointed receivers. Two years later the Southern Pacific Company had acquired a controlling interest in the road and the company was reorganized without foreclosure. In 1903 the State Railroad Commission decided that certain bonds of the company were illegal and they were ordered cancelled. It also held that the control of the line from San Antonio to Houston by the Southern Pacific Company, which also owned the Sunset Line between these cities, was a violation of the constitutional provision which forbids the consolidation of parallel and competing lines. The Commission, therefore, ordered the Southern Pacific Company to dispose of its holdings in the San Antonio and Aransas Pass Railway, and the latter is now operated as an independent line, though many believe that it is still controlled by Southern Pacific interests. In 1904 the extension towards Brownsville was completed from Alice to Falfurrias, thirty-six miles, giving the system a total of 724 miles.

VI. The Colorado and Southern System.

The Fort Worth and Denver City, and the Wichita Valley roads constitute the Texas branches of the Colorado and Southern System, a group of roads in Colorado and Texas aggregating about two thousand miles of line, extending from Denver to Fort Worth, and from Wichita Falls to Abilene. The lines composing the system were consolidated in 1890 under a company known as the Union Pacific, Denver and Gulf, and it, in turn, was but an arm of the great Union Pacific System. In 1893, the Union Pacific and all its subsidiary companies were placed in the hands of receivers. At the time of the reorganization of the

Union Pacific, the lines operated by the Union Pacific, Denver and Gulf were sold to the Colorado and Southern Company, which, in this way, became the proprietor of the Texas lines. It has recently secured an outlet to Houston and Galveston by purchasing a one-half interest, along with the Rock Island System, in the Trinity and Brazos Valley, a new line extending from Fort Worth to the Gulf.³⁷

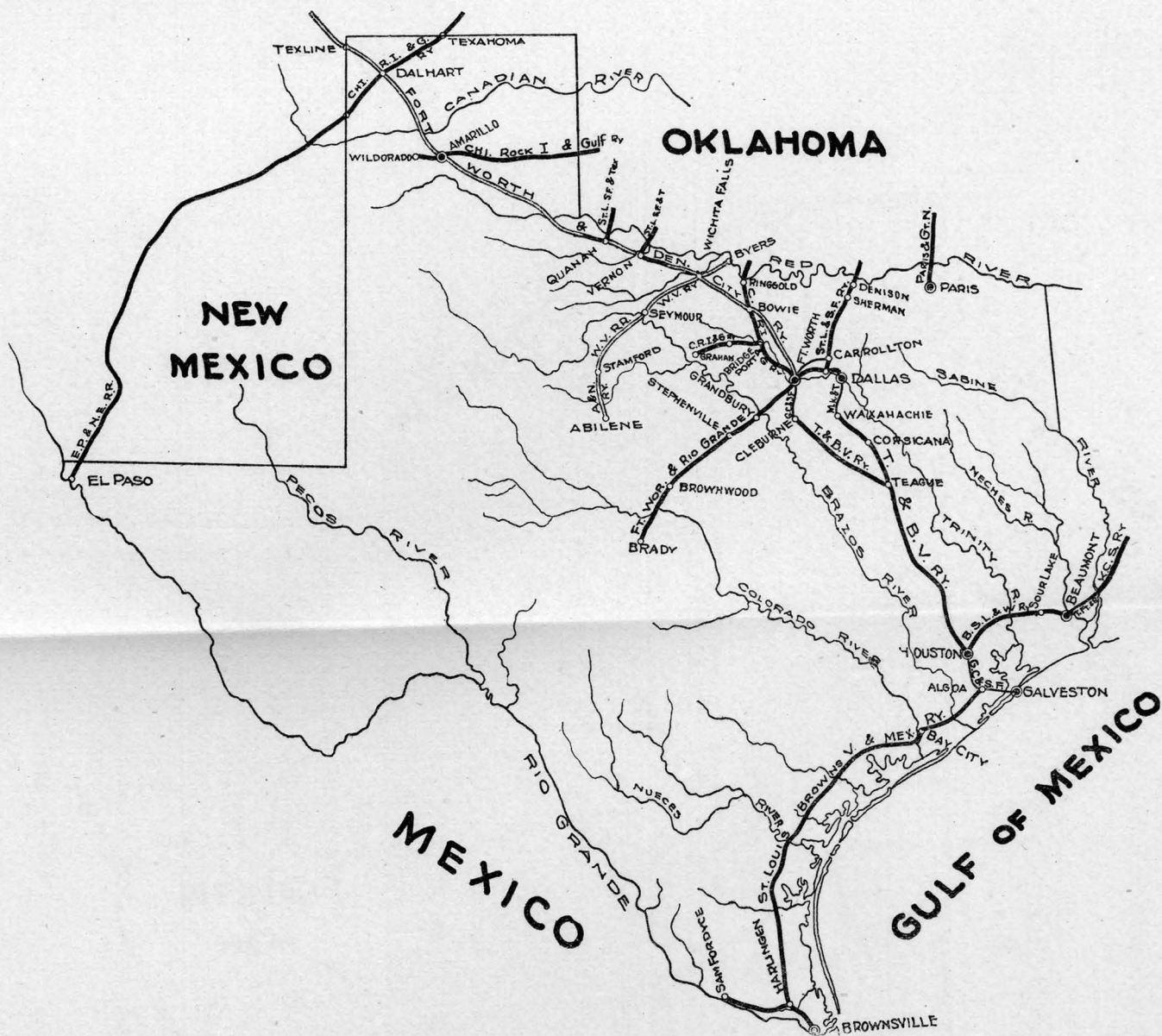
The Fort Worth and Denver City Railway Company was chartered by special act of the Legislature passed May 26, 1873,³⁸ but several years passed before actual construction began. The first section to Decatur, thirty-six miles, was completed on May 1, 1882. It reached Bowie, sixty-two miles, in July, 1882, and Wichita Falls, 110 miles, in September, 1883. It was completed to Harold, 144 miles, in 1885, to Vernon, 163 miles, in 1886, to Clarendon, 276 miles, in October, 1887, and to State Line, 453 miles, on January 26, 1888. On the first of March of that year, through service was inaugurated from Fort Worth to Denver.

The line from Wichita Falls to Abilene is a new road and has only recently passed under control of the Colorado and Southern. The first section of that road, from Wichita Falls to Seymour, was built in the early nineties by the Wichita Valley Railway Company. Recently this road was extended southward to Stamford, sixty miles, by a company known as the Wichita Valley Railroad Company, while another company, the Abilene and Northern, built northward from Abilene to Stamford, thirty-eight miles. Still another company, the Wichita Falls and Oklahoma Railway Company, built northward from Wichita Falls to Byers on Red River, twenty-two miles. On December 31, 1906, all these short lines were taken over by the Colorado and Southern, giving it a line from Abilene to the Red River, 174 miles in length.³⁹

³⁷Since the account above was written, an announcement has been made on what seems to be good authority to the effect that the Colorado and Southern System has been acquired by the Chicago, Burlington and Quincy Railway Company, which is itself owned jointly by the Great Northern and the Northern Pacific railway companies. The Colorado and Southern, with the Trinity and Brazos Valley, will thus become the Gulf outlet for the twenty thousand miles of road embraced in the group of roads controlled by Mr. J. J. Hill and his associates.

³⁸Gammel, Vol. VII, p. 585.

³⁹*Poor's Manual*, 1908, p. 529.



THE ROCK ISLAND-FRISCO GROUP AND THE COLORADO AND SOUTHERN LINES.

VII. *The Rock Island-Frisco System.*

This is one of the strongest groups of roads west of the Mississippi. The Rock Island Railway embraces more than seven thousand miles of line extending from St. Paul and Minneapolis on the north to Fort Worth and Dallas on the south, and from Chicago and Memphis on the east to Denver and El Paso on the west. The Frisco System embraces the St. Louis and San Francisco Railway and the roads associated with it, extending from Chicago and St. Louis on the northeast to Brady, Texas, on the southwest, with a branch through Memphis to Birmingham, a total of more than five thousand miles. These two great groups of roads were consolidated in 1902 by the organization of the Rock Island Company of New Jersey, which, as a mere holding company, acquired all the stock of the Chicago, Rock Island and Pacific *Railroad* Company, which in turn held 93½ per cent of the stock of the Chicago, Rock Island and Pacific *Railway* Company, and about 58 per cent of the outstanding stock of the St. Louis and San Francisco Company. In the past these roads have had only a limited mileage in Texas and have not played a very important part in the transportation business of the State. In recent years, however, by construction and consolidation, they are building up a system that promises to rival the strongest in the State, and to become especially important in carrying the surplus products of the corn belt to ship-side at Galveston and New Orleans.

The St. Louis and San Francisco Railway. The Frisco was the first of the two companies to enter the State, which it did in 1887, by constructing a line from Fort Smith, Arkansas, to Paris, Texas, the Texas end of the line, seventeen miles in length, being known as the Paris and Great Northern. The next move was in 1901, when a Frisco company, the Red River, Texas and Southern Railway Company, was chartered and opened a line from Sherman to Carrollton, on the Cotton Belt, fifty-three miles. The Frisco had built through Oklahoma to Denison, and by the use of the tracks of the Houston and Texas Central from Denison to Sherman, and of the Cotton Belt from Carrollton to Fort Worth, it effected an entrance into Fort Worth.

Within the last few months the Rock Island has built a line connecting Carrollton with Irving on the Dallas extension of the

Rock Island road. The Frisco lines will now enter Fort Worth and Dallas over this Rock Island line, and the trackage arrangement with the Cotton Belt will be abandoned. Several years ago the St. Louis and San Francisco Company acquired a controlling interest in the Fort Worth and Rio Grande Railroad, extending from Fort Worth to Brownwood, 146 miles.⁴⁰ Two other roads of the Frisco System extend into Texas a short distance from Oklahoma, the Blackwell, Enid and Texas Railway reaching Vernon, and the Oklahoma City and Texas Railway extending across the Red River to Quanah. In 1903 an act was passed⁴¹ permitting all five of the Frisco roads just mentioned to be consolidated with the St. Louis, San Francisco and Texas Railway Company, a company organized in 1900 to take over the Texas properties. The Paris and Great Northern and the Fort Worth and Rio Grande have not yet been absorbed.

The Rock Island Railroad. The Rock Island Railroad entered Texas in 1892, its Texas company, chartered July 15, 1892, being called the Chicago, Rock Island and Texas Railway Company. It opened its line from Terral, on the Red River, through Bowie to Fort Worth, ninety-two miles, in August, 1893. The panic then stopped construction for five years. In 1898, a branch was built from Bridgeport to Jacksboro, twenty-eight miles, and extended to Graham, its present terminus, fifty-five miles from Bridgeport, in 1902. The next year the main line was opened from Fort Worth to Dallas.

While these sections were being opened in the Fort Worth territory, the company was doing some building in the Panhandle country. In 1900 the line from Kansas City to El Paso was built through the northwestern county of the State, the portion within the State being known as the Chicago, Rock Island and Mexico. In 1901 the Choctaw, Oklahoma and Gulf Railroad, an Oklahoma line extending eastward to Memphis and leased to the Rock Island company for 999 years, was built westward across the Red River to Amarillo, the Texas section being known as the Choctaw, Oklahoma and Texas Railroad. A trackage arrangement with the

⁴⁰This road was chartered in 1885, completed to Granbury, forty miles, in 1887, to Dublin in 1889, to Comanche in 1890, and to Brownwood in 1891. From Brownwood it was extended to Brady, forty-seven miles, in 1903.

⁴¹Special Laws, Twenty-eighth Legislature, p. 259.

Fort Worth and Denver City from Amarillo to Dalhart gave this line a connection with the El Paso line. In 1903 all the Rock Island properties in Texas were consolidated under one company, the Chicago, Rock Island and Gulf Railway Company, under authority of an act approved March 27, 1903.⁴²

Quite recently the Rock Island-Frisco combination has secured an outlet from Dallas and Fort Worth to the Gulf. In 1902, the Rock Island System, in order to reach Houston and Galveston, arranged for the purchase, from the Southern Pacific Company, of a one-half interest in the Houston and Texas Central Railroad, which was to be turned over to the Rock Island Company and consolidated with its lines. For some reason the State Railroad Commission refused to allow the proposed transfer, presumably for the purpose of forcing the Rock Island to build its own line to tide-water, a plan it had previously had in contemplation. More recently, however, the desired outlet has been secured by the purchase of a one-half interest, along with the Colorado and Southern, in the Trinity and Brazos Valley Railway. This road was organized October 17, 1902, and the first section from Hillsboro to Hubbard City was opened a year later. By January 26, 1904, trains were running from Cleburne to Mexia, seventy-nine miles, and during the year 1907 the main line was completed to Houston and a branch from Teague through Corsicana to Waxahachie. The use of the Santa Fe tracks from Cleburne gives it an entrance into Fort Worth, while the Missouri, Kansas and Texas tracks are used from Waxahachie to Dallas. The Santa Fe tracks are also used at present from Houston to Galveston. The company owns a one-fourth interest in the Houston Belt and Terminal Railway, a very valuable property. The main line from Cleburne to Houston is very well constructed, with low grades and easy curves, and, as it is the only Galveston outlet for an extensive group of roads belonging both to the Rock Island and to the Colorado and Southern systems, it is certain to have a very heavy tonnage.

One other move by the Rock-Island Frisco interests should be noted. Reference is made to the development of a line from Houston to New Orleans, parallel to the Southern Pacific line. The Frisco is building a road through Louisiana, from Baton Rouge to the Sabine river, known as the Colorado Southern, New Orleans

⁴²Special Laws, Twenty-eighth Legislature, p. 239.

and Pacific, which is held by the Frisco under a 999-year lease. This company in turn owns all the stock of the Beaumont, Sour Lake and Western, which was built from Beaumont to Sour Lake in 1905, and has since been opened to Houston. From Beaumont to DeQuincy, Louisiana, the tracks of the Kansas City Southern are used and from Baton Rouge an outlet to New Orleans is secured over the tracks of the Illinois Central and the Yazoo and Mississippi Valley. The Orange and Northwestern, extending from Orange to Newton, sixty-one miles, is also held by the Colorado Southern, New Orleans and Pacific, while the Beaumont, Sour Lake and Western owns a one-fourth interest in the Houston Belt and Terminal Railway. It might be added that the Rock Island has built a line from Little Rock, through Arkansas and Louisiana, to Eunice, on this Houston-New Orleans line, thus giving the Rock Island a direct outlet to New Orleans.

VIII. Some Smaller Systems.

Texas Central Railroad. This line was chartered May 28, 1879, to build two roads, one from a point in McLennan county northwest to the State line, and the other northeast to the State line in that direction. The northwest branch was opened from Ross, the terminus of the Houston and Texas Central, ten miles from Waco, to Albany, 176 miles, in 1882, and to Stamford, 214 miles, in 1899. Recently it has been extended to Rotan in Fisher county, 268 miles from Waco.

The eastern branch was built from Garrett on the Houston and Texas Central near Ennis to Roberts in Hunt county, 152 miles. When it was sold under foreclosure in 1891, it was reorganized under the title of Texas Midland Railroad. It was then extended south to Ennis and north to Paris, the tracks of the Cotton Belt being used between Greenville and Commerce. It is still operated as an independent road.

Texas Mexican Railway. This line extends from Corpus Christi to Laredo on the Rio Grande, a distance of 162 miles. It was incorporated by an act approved March 13, 1875, under the name of the Corpus Christi, San Diego and Rio Grande Railroad.⁴³ Its

⁴³Gammel, Vol. VIII, p. 704.

present name was adopted in 1881. It is operated as a part of the Mexican National System.

The St. Louis, Brownsville and Mexico Railway. This is a road recently constructed paralleling the Gulf coast from Houston to the Rio Grande. It was chartered in June, 1903. Construction began at Brownsville and the line was completed to Robstown, 142 miles, in July, 1904, to Sinton, 162 miles, in April, 1905, to Bay City a year later and to Algoa on the Santa Fe between Houston and Galveston, in the spring of 1907. Houston and Galveston are reached by use of the Santa Fe tracks, while an outlet at Corpus Christi is secured by the use of the tracks of the Texas Mexican Railroad from Robstown. In December, 1904, a branch line up the Rio Grande was completed from Harlingen to Sam Fordyce, fifty-six miles, the total mileage constructed to date being 400 miles. For some time this road was believed to be a part of the Rock Island-Frisco System, but this seems not to be true, though Mr. B. F. Yoakum, Chairman of the Rock Island-Frisco Executive Committee, is president, and largely interested in it.

Kansas City, Mexico and Orient. This road is projected from Kansas City across the States of Kansas, Oklahoma, and Texas, and thence in a southwesterly direction across Mexico to Topolambampo on the Pacific coast, a route which is claimed to be several hundred miles shorter than the other Pacific roads. Sections of the road of considerable length have been completed in Kansas, Oklahoma, and also in Mexico. In Texas, work began at Sweetwater on the Texas and Pacific, and the road has been completed to Red River, 160 miles, and the grade has been completed southward to San Angelo, seventy-five miles. Surveys have been completed from San Angelo west by way of Fort Stockton and Alpine to the Rio Grande near Presidio. Also a branch line has been surveyed to the Rio Grande at Del Rio, with the intention of securing a short line to the City of Mexico by this route.

CHAPTER IV.

POOLS AND AGREEMENTS.

Railway pools and agreements may take on many different forms. Probably the simplest arrangement of the kind is an agreement among railway managers to avoid the evils of competition by maintaining a fixed schedule of rates for the transportation of freights and passengers. Such an agreement depends for enforcement upon the honor and integrity of the managers and traffic officials.

Another method of avoiding competition, in whole or in part, is the pooling of either the traffic to be handled or the money to be received from the traffic. In the traffic pool a central committee undertakes to see that each railroad in the pool gets its share of the traffic, the percentage of the total traffic to be received by each road having been previously determined by agreement. In the money pool each road puts into a common fund all its earnings, except enough to pay operating expenses, which fund is then divided among the members of the pool according to previously arranged percentages. In both kinds of pools an agreed schedule of rates and fares is expected to be maintained by all the constituent companies.

Still another method of preventing competition, without resorting to the actual consolidation of the rival lines, is a division of the territory served by them, each company agreeing to develop its own territory, but not to build roads into the territory of the other parties to the agreement.

All of these methods of combination have been made use of many times by railway managers, in the course of the railway history of this country. There are probably no money or traffic pools now in existence, but there are numerous "traffic associations" and "freight bureaus" in the various sections of the country, which arrange the schedules of rates and fares for all their members and provide penalties for failures to maintain the rates fixed. Doubtless many agreements dividing territory are being faithfully observed in various sections of the country. The application of the principle involved in the division of the territory between rival

lines is resulting in what is known as the territorialization of the railways, by which all the railroads of entire sections of the country are passing under the control of one corporation or group of capitalists. Thus the New England States are given over bodily to the Boston and Maine, and the New York, New Haven and Hartford railroads. A very large percentage of all the business in "trunk line territory," that is, between the Atlantic seaboard on the east and Chicago and St. Louis on the west, is handled by the Vanderbilt lines and the Pennsylvania System, while the Southern States east of the Mississippi river are dominated largely by the Southern Railway and its subsidiary lines.

The tendency to pooling, which became a striking feature of the railroad history in other sections of the country as early as 1870, did not manifest itself in Texas until a decade later. To what extent pools and agreements then existed in Texas it is difficult to say, but speakers and writers make constant reference to them after the year 1880. There were, however, two well authenticated instances of pooling arrangements between the Texas railroads, accounts of which will here be given. One of these was an agreement between Collis P. Huntington, of the Southern Pacific interests, and Jay Gould, by which they agreed to pool the traffic between El Paso and New Orleans and not to build into each other's territory. The other was the Texas Traffic Association, an organization intended to fix schedules of rates and fares for its members, which was successfully attacked in the courts and broken up by Governor Hogg, while he was Attorney General, in 1888.

I. The Huntington-Gould Agreement.

This agreement is believed by some to have been of great importance in the railway history of Texas and other Southwestern States, and may have greatly influenced the construction of new mileage in this section of the country. While this agreement was made in 1881, it was not definitely known to exist until a dozen years later. In 1893, however, a copy of the agreement came into the possession of the Texas Railroad Commission, more by chance than otherwise, and now forms a part of the records of that body.¹

¹The copy in the possession of the Railroad Commission bears the following notation: "Copied from the minute books of the Galveston, Houston and Henderson Railroad Company, at Galveston, Texas, July 27 and

Even since the discovery of this agreement, its existence has been known by only a few individuals, and a detailed statement of its provisions is now made public for the first time.

This Huntington-Gould agreement was entered into in New York City on November 26, 1881, just prior to the completion of the Texas and Pacific to El Paso and the opening of the Southern Pacific from New Orleans to San Francisco. Its object was to adjust the differences then existing between these two railway magnates and to arrange for the division of the traffic and of the territory served by the railway systems controlled by them.

The differences between Huntington and Gould grew out of their rival efforts to open a Pacific railway along the route followed by the old San Antonio-San Diego Stage Line west of El Paso. Congress chartered the Texas and Pacific Railway Company to build along this route and granted it twenty sections of land for each mile constructed in California and forty sections for each mile constructed in New Mexico and Arizona, while the State of Texas made liberal donations to it, as explained elsewhere. Congress also made similar grants to the Southern Pacific Railway Companies of California, Arizona, and New Mexico, organized by Huntington to build along the same route. About the same time Huntington got control of the Galveston, Harrisburg and San Antonio and the Texas and New Orleans and determined to make them parts of his line from San Francisco to New Orleans. While Gould was pushing his line westward through Texas, Huntington was building eastward from San Francisco. He reached El Paso ahead of Gould and began closing in the gap between San Antonio and El Paso by building the Galveston, Harrisburg and San Antonio from both ends of the line. Whereupon, Gould, seeing that he was being distanced in the race, brought suits in the courts of Texas, New Mexico, and Arizona, claiming that the Southern Pacific companies had constructed their roads on the right of way granted by Congress to the Texas and Pacific Company and that

28, 1893, by H. G. Askew, assisted by E. D. True (experts of the Railroad Commission of Texas). No entry appeared on said minutes up to the date above mentioned, showing that this agreement was not at that time still in force, and so far as I am advised, it is still in force at this date.

(Signed) "H. G. ASKEW.

"Austin, Texas, April 5, 1899."

Mr. Askew was then Auditor of the Railroad Commission, but has since resigned to accept a position with the railways of the State.

these Southern Pacific roads were therefore the property of the Texas and Pacific Railway Company. As these suits promised to be of indefinite duration and were proving a serious handicap to both parties in carrying out their schemes of empire building, Huntington and Gould got together in New York, patched up a truce, and entered into a solemn compact not to fight each other.

The agreement, which was signed by the two principals on behalf of the several railway companies controlled by them,² contained in brief, the following important provision:

1. The Texas and Pacific Railway Company should release all its claim to the railroads constructed by the Southern Pacific companies in New Mexico and Arizona and to the right of way on which they were constructed. It should also convey to the Southern Pacific companies all its franchises west of El Paso and its claim to lands in California and in the two Territories mentioned, and it further agreed to take such steps as might be necessary to make this land grant available and, if Huntington desired it, to assist in securing a Congressional ratification of the transfer.

2. The Texas and Pacific Railway Company should continue the construction of its road westward until it formed a junction with the Galveston, Harrisburg and San Antonio Railway in the Rio Grande valley east of El Paso at a point to be selected by the chief engineers of the two companies. From there on to El Paso it should have "a right to a perpetual joint use" of the tracks of the latter company, by "paying therefor six per cent per annum, semi-annually, upon \$10,000 per mile and one-half of the cost of maintenance, renewals and taxes." On similar terms, the Southern Pacific lines should have the use of the Galveston, Houston and Henderson tracks between Houston and Galveston.

²Huntington bound himself to procure the ratification of the contract by the Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company of Arizona, the Southern Pacific Railroad Company of New Mexico, the Galveston, Harrisburg and San Antonio Railway Company and the Texas and New Orleans Railroad Company of Texas, and the Louisiana Railroad Company of Louisiana, while Gould was to secure its ratification by the Texas and Pacific Railway Company, the International and Great Northern Railroad Company, and the Galveston, Houston and Henderson Railroad Company, of the State of Texas, and by the Missouri, Kansas and Texas Railway Company and the St. Louis, Iron Mountain and Southern Railway Company. The minute books of the Galveston, Houston and Henderson show that the agreement was unanimously ratified by the directors of that company on January 27, 1882.

3. The railways belonging to the Texas and Pacific Railway Company and those belonging to the three Southern Pacific companies west of El Paso were to be operated as "one through continuous line," and the "gross earnings from all through business passing over one of said company's lines to the other shall be divided between them in proportion to the distances hauled by each, with equitable and reasonable allowances to each for terminal expenses." The two parties in interest were to have joint soliciting agents at both the eastern and western terminal points and these agents were to accept traffic for either route at the same rates and in all respects without discrimination.³

4. The gross earnings on all business passing over either of these roads between El Paso and New Orleans in either direction were to be pooled and divided equally, while the gross earnings on business passing between El Paso and Galveston should be divided, two-thirds to go to the Galveston, Harrisburg and San Antonio and its connections, and one-third to the Texas and Pacific and its connections. To secure a just distribution of the work to be done, it is provided that "the agents are to divide, as nearly as possible, such business between the two through lines, so that each shall do the proportion of business above allotted."

5. While no arrangement was made for pooling local business, there was to be no competition between the two groups of lines for this character of traffic, for it is declared that "there shall be no discrimination as to local business by any of the roads of either of the parties as against those of the other party." By local business is meant traffic not "carried to and from terminal, common or competitive points," and a competitive point is defined as "any point upon the lines of the railways of the parties hereto that may be reached directly or indirectly by any railroad competitive to either of said roads." That is, if a place was served by one or more roads belonging to either of the two contracting groups of lines, it was not to be regarded as a competitive point unless it was also reached by one or more lines not controlled by either Huntington or Gould.

³This provision, it will be noted, practically made the Texas and Pacific a transcontinental line from New Orleans to San Francisco, and gave it an equal share in the transcontinental business moving over the Southern route.

6. There was to be no construction, by either party to the agreement, of parallel and competing lines, "or any line duplicating in whole or in part, or the building of any line to connect with any other line so as to duplicate in whole or in part, the said line or roads of the said parties," except as authorized by the Executive Committee.⁴ Nor was either party to purchase or control competing roads except through the Executive Committee. If an opportunity offered, either party, subject to the approval of the Executive Committee, might purchase a controlling interest in the Santa Fe system, or in the Frisco system, or in the Atlantic and Pacific Railroad Company which was owned jointly by them; but, if any one of these roads should be acquired, it should be "transferred to, and held and managed by said Executive Committee, as may be determined for the interest and benefit of the parties hereto."

7. In case of any disagreement between the companies or any two or more of them, the differences were to be settled by arbitration and the companies bound themselves to accept the award of the arbitrators.

Such were the principal provisions of this treaty, of alliance and friendship between the Gould and the Huntington interests. Whether the treaty was ratified by all the companies represented by the two principals does not appear, but, as the dozen companies named in the contract were completely dominated by the two great magnates, there is little room for doubt that the other companies did as the Galveston, Houston and Henderson Railway Company, whose board of directors ratified it unanimously. Nor does it appear whether the treaty is still in full force and effect, but it was expressly provided that it was to be of perpetual duration and no direct evidence has been found proving that the treaty has been abrogated.

It is believed that the provision prohibiting the building of parallel and competing lines has exercised an important influence on the amount and character of railroad building in Texas. Roughly speaking, it tended to turn over the northern half of the State to the Gould interests and the southern half to the Southern Pacific interests, and prevented either party from extending its lines

⁴This committee was to consist of C. P. Huntington, Jay Gould, and a third person to be chosen by them.

into the territory of the other. An expert in railroad affairs recently declared that the terms of the contract "were strictly adhered to by the parties until about the year 1900, when the Dallas extension of the Texas and New Orleans Railroad, a Southern Pacific property, and the Fort Worth division of the International and Great Northern Railroad, a Gould property, were built. There is no doubt that this agreement is responsible for the failure of the railroads parties thereto to extend their lines more generally in Texas, and recent indications tend to show that it is now in full force and effect, except so far as the Katy system is concerned, but inclusive of the St. Louis Southwestern Railway." The extension of the Missouri, Kansas and Texas Railroad to Waco and Houston while it was still under the Gould control might be regarded as another breach of the terms of the contract, but this apparent breach and the two cited above may have received the approval of the Executive Committee, which was specifically provided for in the contract.

Not only would the refusal of the two groups of roads to build into each other's territory greatly retard railroad building in the State by any of the companies concerned, but their combined power would act as a deterrent to third parties contemplating the construction of competing lines. But it is easy to exaggerate the importance of such an agreement, and the extent of its influence and the results wrought by it must remain largely a matter of speculation until more evidence can be brought to light.⁵

⁵The account of the Huntington-Gould agreement here given was submitted to Judge N. A. Stedman, who was formerly a member of the Railway Commission of Texas, and who is at present attorney for the leading railway companies of the State. He thinks the importance of the agreement in its influence on railway building in Texas is considerably overestimated. He doubts seriously that the agreement ever became effective, as he has never heard it referred to by any of the railway managers or railway attorneys with whom he has come in contact. If it be true that the agreement was at one time effective, he thinks it has been defunct for many years and that there has been no executive committee since the death of Jay Gould in the early nineties. In addition to the instances, cited in the text, of the invasion of the territory of one of the systems by the lines of the other, Judge Stedman calls attention to the purchase of the Houston East and West Texas Railroad by the Huntington interests. This road is a strong competitor of Gould's Texas and Pacific Railway for the traffic of Shreveport and the surrounding territory.

II. The Texas Traffic Association.

The Texas Traffic Association was an organization embracing nine Texas railroads and eight connecting roads lying beyond the limits of the State.⁶ It was first organized in 1885 and was "re-modeled and reorganized" in New York City on September 16, 1887. In March of the following year Attorney General Hogg brought suit against the Association and its members on the ground that the organization was in violation of the constitutional provision prohibiting the combination of parallel and competing lines. On December 21 of the same year the Texas Supreme Court decided the case against the Association and it was forced to dissolve.

The principal object sought to be accomplished through the organization was the elimination of competition between the railroads that were members of the Association. This object, however, was not set forth prominently in the preamble to the articles of agreement, where it is stated that the organization was formed "for the purpose of preventing sudden and extreme fluctuations in Texas rates, alike injurious to the public and transportation companies, and to provide means for the adjustment of differences between the parties hereto, and to facilitate the transaction and interchange of business, one with another, and with other transportation lines." The traffic sought to be thus regulated and controlled was "all freight and passenger business (except express and mail) carried by lines parties hereto, which has origin or destination within the State of Texas, other than business from El Paso, Eagle Pass and Laredo proper."

The articles of agreement provided that the affairs of the association should be managed by an executive committee, which should consist of one member from each company signing the

⁶The Texas railroads included in the Association were the Gulf, Colorado and Santa Fe; the Texas and Pacific; the Houston East and West Texas; the Houston and Texas Central; the Texas Central; the St. Louis, Arkansas and Texas (the Cotton Belt); the Fort Worth and Denver City; and the Missouri Pacific, which, though a foreign corporation, operated under lease the Missouri, Kansas and Texas and the International and Great Northern. The lines without the State included in the Association were the Shreveport and Houston; the St. Louis and San Francisco; the Memphis and Little Rock; the Atchison, Topeka and Santa Fe; the Southern Kansas Railway; the St. Louis, Iron Mountain and Southern; the Kansas City, Springfield and Memphis; and the Kansas City, Fort Scott and Gulf.

agreement. Two-thirds of the members were to constitute a quorum and important questions were to be settled only by a unanimous vote of the committee. The powers of this committee were extensive and very important. "The Executive Committee," says the contract, "shall agree upon the classifications and rates covering the traffic subject to this agreement. No member shall, directly or indirectly, reduce the rates, by rebate, drawback, special rate, under-billing, or any other device; and no commission or its equivalent shall be paid by either party hereto on any freight traffic secured for or carried by any party hereto; nor shall any names be carried upon pay-rolls or salary vouchers except those of bona fide employees." The next clause in the contract provides for enforcing the rates as fixed by the Executive Committee, as follows: "In case any violation of this agreement is believed to have been committed, report thereof shall be made promptly to the Commissioner, whose duty it shall be to investigate in any manner he may elect and check the irregularity if he can, and in case he cannot he shall convene the Executive Committee to deal with the offender and take the measures necessary to protect other members."

The commissioner here referred to was to be the executive officer of the Association. He should be elected by a unanimous vote of the Executive Committee, but might be removed by a two-thirds vote. He was to have permanent headquarters at Houston, and should have a sufficient number of office assistants to enable him to carry out the provisions of the agreement. His salary and the expenses of his office were to be borne by the members of the Association in proportion to the "exact interest of each party in the Association." The Commissioner was to make the assessments of current expenses at the beginning of each month, and, if any member had not paid its assessment by the twentieth of the month, the Commissioner was authorized to draw at sight on the defaulting company. The provisions of the contract and all rules and regulations adopted by the Association should be interpreted and construed by the Commissioner, but his decisions

This quotation from the articles of agreement is interesting, as it enumerates a number of devices by which railway managers were accustomed to grant special rates to favored shippers.

might be overruled by a two-thirds vote of the Executive Committee.

When any rate or regulation was adopted by agreement or by arbitration, it was to be simultaneously furnished by the Commissioner to the traffic department of each member of the Association for the guidance of the parties in interest, "and no deviation therefrom shall be allowed or any change therein be made unless authorized by the Commissioner in accordance with the rules of the Association, or until twenty days' notice has been given by any party hereto of its desire to make a change, on receipt of which the Commissioner shall at once call a meeting to consider the proposed change." Any line could propose a rate or division not previously agreed upon and submit it to a vote of the Executive Committee through the Commissioner, but such rate should not be effective until furnished to all parties by the Commissioner, or until the twenty days' notice had expired. In cases of emergency, the Commissioner was to have power to make changes in rates or regulations, to remain in force until the next meeting of the Executive Committee.

The articles of agreement provided for the settlement of disputes among the members of the Association by arbitration. If any party felt aggrieved by a decision of the Executive Committee he could appeal to a temporary board of arbitrators to be appointed to adjust the difficulty. One arbitrator was to be appointed by the complainant and one by the Commissioner. These two were to name a third, who was to hear the evidence but take no part in the decision unless the other two failed to agree.

Such were the principal provisions of the contract by which the Association was formed.⁸ It began business in 1885 with Mr. J. Waldo, of the Houston and Texas Central, as the Commissioner. After three years of activity it was attacked in the courts by Attorney General Hogg on the ground, as previously stated, that it was a combination of parallel and competing lines, which was forbidden by the State Constitution. The companies, in their answers, denied that there was any conspiracy or combination in vio-

⁸A copy of this contract was made a part of the petition filed in the suit against the Association, by Attorney General Hogg in 1888, and is a part of the transcript of the case now on file with the Texas Supreme Court at Austin. It was from this copy that the facts above stated were taken.

lation of the Constitution, and asserted that the object of the Association was to steady rates and prevent the constant and violent fluctuations that had characterized the rate-wars of former years. Rates, on the whole, they asserted, had been lowered thirty per cent below the published rates of the roads before the Association was formed, and secret rebates and discriminations had largely been abolished as a result of the Association's work. They filed more than two hundred affidavits of merchants, boards of trade and other commercial bodies, showing that the rates fixed by the Association had not been excessive, but had been steady and uniform to a degree never before known in the history of the State. Stability and uniformity of rates, the defendants asserted, were absolutely essential to the successful management of the affairs of the commercial world and could be secured in no other way than by an association having power to enforce uniform rates.⁹

The case was tried in the Travis county district court, before Judge John C. Townes, now Dean of the Law Department of the University of Texas. On appeal the decision of the lower court was affirmed by the Supreme Court,¹⁰ and the Association was forced to dissolve. Following the dissolution, there was organized the International Traffic Association, with headquarters out of the State, and the International Weighers' Association, located within the State. They attempted to carry on the work of the defunct association, but they were both forced to dissolve by the "power and effect of the decree entered in the first instance."¹¹

⁹There was doubtless much truth in the contention of the railways that the Association benefited both the railroads and the shipping public, but their arguments only strengthened the position of the advocates of a State Railroad Commission. If uniformity and stability could only be secured by having rates fixed by a central committee with power to enforce its rates on all the roads, why should not the public, who must pay the rates, have a voice in fixing them?

¹⁰Gulf, Colorado and Santa Fe Railway Company vs. The State, 72 Texas, 404.

¹¹Raines, *Speeches and State Papers of James Stephen Hogg*, p. 28. This work will hereafter be referred to as "Raines."

III. Recent Pooling Arrangements.

The dissolution of the Texas Traffic Association and the organization of the Texas Railroad Commission some two years later put a stop to traffic associations and rate agreements, in so far as they sought to control railway rates on intrastate traffic in Texas. Since its creation in 1891, the Railroad Commission has prescribed the rates for all traffic having both origin and destination within the State, and the roads have not been allowed to depart from the tariffs so fixed. But the State Commission has no control over interstate traffic, and it cannot be doubted that rates on this traffic are still largely controlled by traffic associations similar in character to the Texas Traffic Association, described in the foregoing account.

It will be remembered that practically all the effective railway mileage in Texas is controlled by outside corporations and interests, over which the Texas Railroad Commission and the courts of the State can exercise no control. Thus the Southern Pacific Company of Kentucky controls four important Texas roads aggregating nearly three thousand miles of line, while another three thousand miles is dominated by the Gould interests. The Santa Fe, the Rock Island, the Frisco, the "Katy," the Fort Worth and Denver City, and the Trinity and Brazos Valley are the other important Texas roads and all are owned and controlled by corporations created by other States and situated beyond the reach of Texas and her laws. It follows that when these outside corporations enter into pooling arrangements or traffic associations they carry with them the Texas roads in so far as the latter are engaged in interstate business. And it must be remembered that much the larger part of the traffic on which the people of Texas pay rates is interstate in character.

While it may be difficult of legal proof, it is very generally believed that the companies controlling the railroads leading into Texas from St. Louis, Kansas City, Denver, New Orleans, and other southwestern trade centers, are members of traffic associations or pooling arrangements of some sort by which the rates to Texas points are agreed upon by all the roads concerned before they are published and put in effect. Take for an example the excursion rates from Texas points to the summer resorts in the

Northern and the Eastern States. After a conference of the passenger officials, it is usual for all the roads leading out of Texas to announce the same rates, effective on the same days, and good for return until exactly the same date in the autumn. The changes in freight rates in recent years serve as an even better illustration of the concert of action existing among these companies. In March, 1903, rates on freight were arbitrarily advanced more than seven per cent, by the simultaneous action of the roads extending from St. Louis into Southwestern territory. Another advance of about ten per cent was made by these lines on August 10, 1908. At this writing, the Texas Railroad Commission is engaged in an attempt, in a hearing before the Interstate Commerce Commission, to prove that this advance was agreed upon by the "Southwestern Traffic Committee," and other similar associations, and that it is a conspiracy in restraint of trade and commerce between the several States, in violation of the Sherman Anti-Trust Act of 1890. The representatives of the railways, however, say that these cases of apparent agreement on rates result from the fixing of rates by one road and the meeting of the rates so fixed by the other roads. And they assert that there have been many reductions of rates, which reduce the average increase to only two or three per cent.

It is not intended here to express an opinion of the alleged evils resulting from pooling agreements or the supposed benefits flowing from competition in the railway business, and this reference to recent pooling arrangements has been made only for the purpose of rounding out the history of pools and agreements in Texas.

CHAPTER V.

PUBLIC AID TO RAILWAY CONSTRUCTION.¹

Probably no people have ever been more liberal than the people of Texas have been in their donations, public and private, to aid in the construction of railways. The people early realized that the great interior region of the State was relatively worthless and would remain so unless it could be supplied with transportation facilities. As a result, we find them willing and even anxious to grant the most liberal concession to railway promoters, and when they saw that liberal concessions alone would not secure the roads, we find them contributing generously of whatever resources they had at hand, whether lands, labor, money, or materials of construction. And it was but natural that the people, in their reckless generosity, should in many cases become the victims of selfish and designing individuals and corporations, who wished to speculate in the public lands and grow rich at the expense of others. To these fraudulent schemes, together with the fact that the railroads seemed to the people of that period to repay their generosity with exorbitant charges and ruinous discriminations, may be traced most of the hostility that at times has made itself manifest in jury box and legislative hall. It was a perfectly natural reaction resulting from the disappointment of the extravagant expectations of those who had contributed. Every railway enterprise was expected to make the desert blossom as the rose, and when the rose seemed slow in unfolding its petals the contributing public became bitter and blamed it all on those who were managing the railways. It was the same reaction that manifested itself in the Northwest as the "Granger Movement," and has manifested itself wherever similar conditions have prevailed.

One of the most usual forms of aid to railway building comes in the shape of donations from private individuals. The business

¹Much of the material for this chapter is taken from an exhaustive, unpublished paper on "Land Grants to Railroads in Texas," by A. Deussen, Instructor in Geology in the University of Texas. The paper was prepared while its author was Hancock Fellow in Political Science, in the University of Texas, in 1902-1903.

men of the towns raise bonuses in money and grant lands for stations and shops, while the people along the route are expected to donate the right of way across their lands. This form of aid was commonly practiced in all parts of the country and is still much in vogue in Texas and other parts of the Southwest. It is impossible to estimate the amount of the aid in this form the railroads of Texas have received, but it certainly formed a considerable fraction of the original cost of construction.

The object of the present discussion, however, is to give an account of the aid granted by public authority as distinguished from donations made by private individuals or commercial bodies. The most important form of public aid given to the railways in Texas was undoubtedly the grants of land that were made from the public domain. Other forms of public aid were: 1, aid by counties and cities; 2, loans from the permanent school fund; and 3, grants of money or bonds by the State government. These forms will be considered in the order named before an account is given of the grants of public land.

I. Aid by Counties and Cities.

The first railway companies chartered in Texas were granted very liberal charters, many of them including the right to issue notes to circulate as money. No public aid was extended to them, however, but, on the contrary, in the case of the Texas Railroad, Navigation and Banking Company, the promoters were required to pay a bonus to the State for their privileges and to pay for the right of way across the public lands. After a dozen or more companies were granted liberal concessions but had forfeited their charters one after another without being able to raise funds enough to begin the work of construction, the statesmen of that period began to realize that the population was too sparse and free capital too scarce to bring about an early development of railway facilities. They, therefore, did just what was being done in many other States of the Union; they provided for the sale of the public credit in the shape of county and city bonds in order to secure funds for railway construction.

The first act providing for the use of county and city bonds for railway construction was the act chartering the San Antonio

and Mexican Gulf Railroad, passed September 5, 1850.² It allowed any county or incorporated town along the proposed route upon a vote of two-thirds of the taxpayers to subscribe to the capital stock of the company to an amount not exceeding \$50,000. City or county bonds were to be issued to pay for the railway stock subscribed for and a special tax was to be voted to pay interest on the bonds and create a sinking fund. Any dividends received on the railway stock should be applied to the sinking fund. Under this act the City of San Antonio and Bexar county, in which San Antonio is located, each voted \$50,000 of bonds. The road was built from Lavaca to Victoria, twenty-eight miles, so the subsidy amounted to \$3571 per mile. As the road was not built to San Antonio, the city refused to pay the interest on the bonds, but President Jones brought suit and the bonds were held to be valid and the city was forced to pay.³

Several other roads, incorporated during the next few years, were given power to receive subsidies from cities and counties, but no subsidies were granted. In 1869, a great impetus was given to this form of public aid, as a result of the fact that grants of public lands, which had been mainly relied upon by the railways, were forbidden by the Constitution adopted in that year. In 1871, a general law was passed allowing any county, city or town to donate or subscribe bonds to aid in railway construction.⁴ The following is an incomplete list of the cities and counties that voted bonds to railroads under the terms of this act:

CITIES.

<i>Date of Issue.</i>	<i>City.</i>	<i>Railroad.</i>	<i>Amount.</i>
April 30, 1873.	Tyler.....	Houston & Great Northern	\$50,000
Feb. 12, 1874.	Sherman.....	Texas & Pacific.....	84,000
April 24, 1874.	Dallas.....	Texas & Pacific.....	100,000
June 6, 1876.	Waxahachie..	Houston & Texas Central	63,000

²Gammel, Vol. III, p. 814.

³San Antonio vs. Jones, 28 Texas, 19.

⁴Act approved April 12, 1871, Gammel, Vol. VI, p. 931. Also see pp. 977 and 1644.

COUNTIES.

<i>Date of Issue.</i>	<i>County.</i>	<i>Railroad.</i>	<i>Amount.</i>
.....	Bexar.....	Galveston, Harrisburg & San Antonio.....	_____
.....	Brazoria.....	Houston Tap & Brazos...	\$100,000
1875.....	Galveston....	Gulf, Colorado & Santa Fe	500,000
1872.....	Smith.....	Houston & Great Northern	200,000
1873.....	Anderson....	Houston & Great Northern	150,000

From these incomplete figures it seems that the cities of the State, including the earlier grant by San Antonio, issued bonds to the amount of \$347,000, and the counties, including Bexar county's early grant, to the amount of more than \$1,000,000.

This form of aid was condemned by the Democratic party and when it came into power again, in 1874, an act was passed repealing the law of 1871, under which these bonds were issued.⁵ The next year, when the present Constitution of the State was drafted, a clause was inserted which prohibits the Legislature from authorizing any "county, city, or town * * * to lend its credit or to grant public money * * * to any individual, association, or corporation * * * or to become a stockholder in such association or corporation."⁶ This provision practically put an end to this form of public aid, though it seems that there

⁵Acts approved April 22 and May 2, 1874. (Gammel, Vol. VIII, pp. 120 and 225.) However, the law was to remain in force in several counties in the southwestern portion of the State, and in 1875 a special act was passed allowing the town of Henderson to issue bonds in aid of the Henderson and Overton Railroad. (Gammel, Vol. VIII, p. 635.) The bonds were to be issued to the contractors on condition that the road should be completed by a certain date. They failed to finish the work in the required time and thereupon abandoned the enterprise, which was completed by private subscriptions made by the people of the town. Nevertheless, the bonds were issued and delivered to the contractors, without the knowledge of the people of the town, it is said. When it became known that the bonds had been issued the town corporation was disbanded, to avoid the payment of the bonds. A number of years afterward some of the bondholders brought suit in the Federal court at Tyler and took judgment by default. Upon learning of this, the citizens raised money, employed counsel and asked for a rehearing. Judge Sabine, who was then on the bench, was disposed to grant the rehearing, but died before any action was taken. His successor has not seen fit to disturb the judgment, and Henderson, one of the oldest communities in the State, remains to this day unincorporated save for school purposes, and entirely without town or city government.

⁶Constitution of Texas, 1876, Art. 31, Sec. 52.

were a few attempts made to evade the plain import of this clause. Thus, in 1879, the town of Brenham issued twelve thousand dollars of negotiable bonds and used the proceeds in the purchase of right of way and depot grounds for the Santa Fe Railway. These bonds were subsequently held to be void, but the decision did not affect the railway's title to the lands.⁷ The town of Cleburne also granted lands for right of way and depot to the Santa Fe Railway, and the Supreme Court of Texas held the scrip issued to make the last payment on the lands to be void.⁸

II. Loans from the Permanent School Fund.

In 1850, Texas surrendered her claim to the portion of New Mexico east of the Rio Grande and accepted her present boundaries. In return she received from the Federal Government \$10,000,000 in United States bonds. Two million dollars of this amount was set apart as a permanent school fund, the interest being distributed among the counties and used in the support of the schools. As the bonds were maturing and being paid off, the money began to accumulate in the State Treasury and the schools suffered the loss of the interest. It was, therefore, desirable to find some method of investing the money, which would be safe and would yield a return to the school fund. At the same time the railways were greatly in need of ready cash. They had lands and labor in many cases, but they found it extremely difficult to raise enough money to pay for ties and rails and rolling stock. It was, therefore, proposed that the State lend the school fund to the railway companies, and take a first lien on the roads as security.

Accordingly an act was passed in 1856, providing that when a railroad company could show a continuous section of twenty-five miles or more completed and ready for the rolling stock and another like section graded and ready for the rails and ties, it should be entitled to receive money from the public school fund to the amount of \$6000 for every mile actually completed. In

⁷The ground of this decision was that the city charter, which authorized the city to borrow money, did not authorize it to issue *negotiable* bonds. *City of Brenham vs. German American Bank*, 144 U. S., 173.

⁸*City of Cleburne vs. Gulf, Colorado and Santa Fe Railway Company*, 66 Texas, 457.

return the company was required to execute its bond to the State for the amount of money received, and to pay thereon eight per cent per annum, six per cent as interest to the State and two per cent to create a sinking fund for the retirement of the bonds at maturity. The act created a board of school commissioners composed of the Governor, the Comptroller, and the Attorney General, and provided for the appointment of a competent engineer to inspect the roads and see that they were constructed in a "good and substantial manner."⁹

Under the terms of this act loans were made from the school fund to six companies, the loans being made either in United States bonds or in money. No loans were made after the Civil War. The following table shows the amount loaned to each company:

Houston and Texas Central.....	\$450,000
Buffalo Bayou, Brazos and Colorado.....	420,000
Texas and New Orleans.....	430,000
Houston Tap and Brazoria..... ..	300,000
Southern Pacific (Texas and Pacific) ..	150,000
Washington County Railroad (H. & T. C.)	66,000
<hr/>	
Total.....	\$1,816,000

These loans were scarcely made when the war came on and so seriously crippled the roads that none of them were able to keep up their payments of interest and sinking fund. In 1862 a relief act was passed extending the time for paying interest and sinking fund until January 1, 1864, or until six months after the close of the war, if it should close prior to that date. After the war the companies were still unable to meet their obligations and the Reconstruction Convention of 1868 ordered several of them sold at auction to discharge their debts to the school fund. However, only one, the Houston Tap and Brazoria, was sold, the sale taking place in Austin February 15, 1871. The other companies were able to take advantage of a general relief act passed August 13, 1870, which provided that the companies might avoid sale by the payment on November 1, 1870, of six months'

⁹Gammel, Vol. IV, p. 449.

interest on the aggregate amount due, both principal and interest, as it stood on May 1, 1870; by the payment of one per cent additional for sinking fund; and by repeating these payments semi-annually on May 1st and November 1st of each year.¹⁰

The Washington County Railroad continued its payments under this arrangement with fair regularity until May 1, 1879, the Houston and Texas Central until November 1, 1893, and the Galveston, Harrisburg and San Antonio until May 1, 1894. They then ceased their payments on the ground that the entire obligation had been discharged. The State claimed that considerable sums were still due by the companies and brought suit to recover the balances. The case went to the Supreme Court of the United States, which, on March 26, 1900, decided the case in favor of the railroads and declared the entire obligations discharged, in so far as the three roads mentioned were concerned.¹¹

The settlement with the other three companies took place as follows: The Houston Tap and Brazoria was sold by the State under foreclosure, February 15, 1871, for \$130,000. The debt due by it to the State at that time amounted to \$402,000, including both principal and interest. There was, therefore, a loss to the school fund of \$272,000. The debt due by the old Southern Pacific Railway Company was assumed by the Texas and Pacific at the time of the consolidation in 1872. Regular payments were made by the latter company until March 1, 1898, when

¹⁰Gammel, Vol. VI, p. 259.

¹¹177 U. S. Reports, pp. 66 and 103. This controversy came about in this way: In 1863-64 the Legislature passed several acts for the relief of the railway companies that were indebted to the school fund, permitting them to use State bonds and treasury warrants to make their payments of principal, interest and sinking fund due to the State, on condition that they would accept the State bonds and treasury warrants at par in payment of freight rates and fares due to them by the public. (Gammel, Vol. V, pp. 691, 767, and 820.) Under authority of these acts, the three companies named accumulated bonds and treasury warrants when they were much depreciated at the close of the war, and paid them over to the Treasurer and received credit on their interest and sinking fund accounts. After the close of the war the reconstructionists held the payments to be illegal on the ground that the State bonds and treasury warrants were issued in support of the "rebellion," and were, therefore, illegal. The Comptroller, therefore, recharged the amounts against the companies on his books and proceeded to collect interest thereon, which the companies paid each time under protest. When they had paid the amounts due by them, not including these disputed payments, they refused to pay more and suffered themselves to be sued, with the result as stated in the text.

the entire remaining indebtedness was discharged. The Texas and New Orleans still owes the school fund something more than \$303,000, on which it is regularly making the semi-annual payments of interest and sinking fund as agreed upon in 1871.

Opinions have differed widely as to the wisdom and success of this policy of lending the school fund to the railways. One writer says: "It proved a miserable failure. While doubtless advantageous to the railroads, it was very disadvantageous for the State. Doubtless it contained some elements of merit, but the enormous loss that accrued to the school fund is eloquent testimony to the fact that not all finely conceived theories work out in practice." On the other hand Governor Hogg thought well enough of the system to advocate a law providing for the investment of the school fund in the first mortgage bonds of railways. In his speech at Wills Point, April 22, 1892, in opening his campaign for renomination as Governor, he said that the State loaned \$1,816,000 and had received up to that date \$3,102,000 as principal and interest, while other amounts were still due. "With the wreck of war, involving the desolation of homes, waste of fortunes and repudiation of public and private obligations, there were few or no securities that survived except these very railroad bonds in which the school fund had been invested. There was less loss to the school fund from that investment than from any other securities, either public or private, known to the authorities of the State."¹²

III. Aid by Grants of State Bonds.

During the period of active railway construction in this country it was a common practice for the States, and even the Federal Government, to lend their credit to the railway companies by donating public bonds, or by guaranteeing the interest and principal of bonds issued by the companies themselves.¹³ Sometimes the companies were required to repay the sums advanced, as was the case in the Federal loans to the Union Pacific and the Central Pacific, while in other cases the amounts advanced were donations

¹²Raines, p. 134.

¹³Missouri spent nearly \$32,000,000 and Tennessee incurred a debt of more than \$29,000,000 in aiding railway construction. See Johnson, *American Railway Transportation*, pp. 307-321.

pure and simple. Especially reckless was the financiering of this kind in the Southern States during the period of reconstruction, and most of these States came out of those stressful times with crushing loads of debt that made repudiation justifiable, if it may ever be justified. Texas, more by chance than otherwise, escaped from the most irksome burdens that were saddled on the other States that joined the Confederacy.

The first proposition for the lending of the State's credit to railways occurs in the Constitution of 1866, where the Legislature is authorized to guarantee the bonds of railways to the amount of \$15,000 per mile, provided the company had graded twenty-five miles.¹⁴ No act for putting this provision into practice was passed by the Legislature, and it was omitted from the Constitution framed and adopted by the Congressional Reconstructionists in 1869.

As the Constitution of 1869 prohibited further grants of land to railway companies, and as about this time there was a revival of interest in railway construction, the Legislature for the next few years was deluged with applications for grants of State aid in the form of money or bonds. Governor E. J. Davis adopted a sane attitude on the subject and did what he could to stem the tide: In his message to the Legislature in 1870 he said: "I am led to believe that great caution will be necessary to avoid encumbering our State with weighty debt, created in furtherance of the many schemes for private advantage, but calling for State aid, that will be forced upon you in the name of internal improvements."¹⁵ He opposed all pledges of the State's credit, but thought that if the Legislature was determined to make grants to any enterprise it should be to a road that would connect Austin with the roads entering the State along the northeastern boundary.

In spite of the Governor's advice, two acts were passed granting many millions of State bonds to two railway enterprises, the one to secure a road along the line suggested in the Governor's message and the other to secure the speedy construction of a road across the northern part of the State to the Pacific coast. The former act was passed, August 5, 1870, "to incorporate the International Railway Company, and to provide for the aid of the State of

¹⁴Constitution of 1866, Art. VIII, Sec. 36. Gammel, Vol. V, p. 878.

¹⁵*House Journal*, 1870, p. 21.

Texas in constructing the same." It provided for the construction of a road from a point on the Red River, opposite the town of Fulton, Arkansas, to Laredo, on the Rio Grande. It then continues: "In order to secure and promote the rapid construction of said railway, and thereby afford cheap and necessary facilities for immigration into the State * * * the State of Texas consents, binds, and obligates itself to donate, and hereby grants to said company the bonds of the State of Texas to the extent and amount of ten thousand dollars per mile, for each mile of said railroad constructed under this charter." The bonds were to run for thirty years and bear interest at the rate of eight per cent. They were to be signed by the Governor and Treasurer and countersigned and registered by the Comptroller, and then issued when proper proof should be made that twenty miles had been completed in a "thorough and substantial manner."¹⁶

The company organized under this charter and on November 25, 1871, notified the Governor that fifty-two miles had been completed and thirty-three more graded, and made formal application for the bonds due on the first fifty miles. The bonds to the amount of \$500,000 were prepared and signed by the Governor and the Treasurer and were then presented to the Comptroller, Mr. A. Bledsoe, to be registered and countersigned by him. He refused to sign the bonds on the ground that the law was unconstitutional on account of the use of fraud in securing its enactment. The railroad company then instituted *mandamus* proceedings to compel him to sign them, but the Texas Supreme Court held that the proceedings could not be sustained and ordered the case dismissed.¹⁷

In the meantime the matter was settled in 1875 by a compromise. An act was passed, recognizing the State's indebtedness to the railway company—now combined with the Houston and Great Northern Railroad Company, under the name of International and Great Northern Railroad Company—but offering, as a substitute for the bonds, twenty sections of land for every mile built or to be built under the act of August 5, 1870, together with an exemption from taxation for a period of twenty-five years. The company decided to accept the land and tax-exemption and the honor and

¹⁶Gammel, Vol. VI, p. 606.

¹⁷Bledsoe vs. International Railway Company, 40 Texas, 537.

credit of the State were saved. The company did not receive lands on the portion of its line between Austin and Laredo, because it failed to construct it within the time limited in its charter.

The other act granting State bonds to railways was entitled "An act to encourage the speedy construction of a railway through the State of Texas to the Pacific Ocean," and was passed over the Governor's veto, May 24, 1871. It granted a total of \$6,000,000 in eight per cent bonds to be divided equally between the two companies that were then engaged in an effort to build a Pacific railroad, the Southern Pacific, projected from Longview westward through Dallas, and the Southern Transcontinental, projected from Texarkana westward just south of the Red River. The two roads were to form a junction at some point west of the eastern boundary of Shackelford county and form one line from there westward. No bonds were to be issued until both roads were completed to the junction point. If the Constitution of the State should be changed so as to allow the Legislature to grant lands to railway companies, then any future Legislature should have the power at its own option to grant to the companies twenty-four sections of land per mile of road instead of the bonds. Finally it was provided that the Texas Pacific Railroad Company, chartered by act of Congress, March 3, 1871, should succeed to all the rights and privileges granted by the act to the two companies mentioned, should it consolidate with them, as was then contemplated.¹⁸

The passage of this measure, along with the International Railroad bond muddle, provoked an outburst of popular disapproval and charges of fraud and corruption were freely bandied about. Governor Coke in his second annual message to the Legislature, in 1875, says that the original International bond act, "by common consent and admission was carried through the Twelfth Legislature by the most unblushing bribery."¹⁹ As a result of this agitation an amendment to the Constitution was adopted, allowing the Legislature to make grants of land to railway companies, provided not more than twenty sections per mile should be so granted.²⁰ To the Texas and Pacific Company, which had now succeeded to the rights of the other companies under the former act, was granted

¹⁸Gammel, Vol. VI, p. 1623.

¹⁹*House Journal*, 1875, p. 83.

²⁰Amendment was ratified March 19, 1873, Gammel, Vol. VII, p. 676.

twenty sections of land per mile of road instead of the bonds of the State.²¹ When the present Constitution of the State was drafted in 1875, a provision was inserted stating that the "Legislature shall have no power to make any grant of public money to any individual, association of individuals, municipal or other corporations whatsoever."²²

Thus terminated this form of State aid. Fortunately the State escaped without any bonded indebtedness resulting from the reckless attempts to lend the State's credit, though bonds to the amount of twelve or fourteen millions had been voted by the Legislature.

IV. Aid by Grants of Public Lands.

Texas, it will be remembered, reserved her public lands for her own use when she entered the Union in 1845. All the other States, except the original thirteen, were carved out of the national domain and the unoccupied lands within their borders remained the property of the Federal Government. Texas is, therefore, the only one of the new States that has had a public land question to solve, and her history in this particular is unique. It hardly need be said that her vast public domain has been a most valuable asset, furnishing her the sinews of war in times of danger, attracting immigrants to her borders, supplying an inducement for the early development of her transportation facilities, and finally endowing handsomely her schools and her charities. An account of the management of these public lands, when properly written, will make an important chapter in the State's history. No more can be attempted here than to give a very brief sketch of the use the State has made of her lands in aiding the development of transportation facilities.

The history of the land grant policy in Texas covers a period of thirty years, beginning with the first grant made in 1852 and ending with the repeal of the land grant act of 1876, in 1882.²³

²¹Act of Thirteenth Legislature, passed May 2, 1873, Gammel, Vol. VII, p. 1018.

²²Constitution, Art. III, Sec. 51. Gammel, Vol. VIII, p. 792.

²³In adopting this form of public aid, Texas was no doubt influenced by the action of the Federal Government. As early as 1850, Congress granted a large block of the public domain to aid the Illinois Central and Mobile and Ohio in opening a road from Chicago to New Orleans. See Johnson, *American Railway Transportation*, p. 311.

During this period the railroads of the State received a total of 24,453,000 acres of land, or more than 38,000 square miles, an area larger than the State of Indiana. The distribution of this vast body of land among the forty-one companies entitled to it, the recording and plotting of the field notes, the issuing of patents, the preventing of fraudulent locations, and the adjustment of conflicting claims between the companies and the immigrants who were constantly settling upon the lands, involved an administrative problem without a parallel in any State of the Union, and equalled only by the Land Department of the Federal Government.

The history of land grants in Texas divides itself into five periods, as follows:

1. The first period of special land grant acts, 1852-1854.
2. The period of the first general land grant act, 1854-1869.
3. The period of prohibition of land grants, 1869-1873.
4. The second period of special land grant acts, 1873-1876.
5. The period of the second general land grant act, 1876-1882.

The first grant of land by the State of Texas to aid in railway construction was made in the charter of the Henderson and Burkville Railroad, approved February 10, 1852, though prior to this time a few roads had been given a right of way across any unoccupied public lands. By the terms of this act, when the company had completed five miles or more, the Comptroller could require the State Engineer, or a commissioner to be appointed by the Governor, to examine the road, and, upon this officer's report that the road was satisfactory, the Comptroller was to notify the Commissioner of the General Land Office, who was required to issue land certificates to the amount of eight sections of 640 acres each for every mile of road completed. These certificates could be located on any vacant public lands within one year from the time they were issued. The lands so acquired were to be alienated, one-fourth within six years and one-fourth within each period of two years thereafter until all were sold.²⁴

On February 14, 1852, a charter was granted to the Texas Central Railroad Company. It contained the same land grant provisions as the Henderson and Burkville charter, with the additional

²⁴Gammel, Vol. III, p. 1145.

provision that as soon as the route of the road should be designated by survey or otherwise, all the vacant public lands for three miles on each side should be reserved from settlement. As fast as the road should be built, this reserved area was to be surveyed into blocks fronting one mile on the road and extending three miles back. The alternate blocks were to be reserved for the State, while the company might locate its certificates on the remaining blocks.²⁵ Similar grants were made to all roads chartered from this time up to the passage of the general land grant act in 1854. Of the nineteen grants thus made, only two resulted in the construction of the required mileage so as to secure the lands.

On January 30, 1854, the principles evolved during the period of special grants were enacted into a general law, entitled "An act to encourage the construction of railroads in Texas by donations of lands."²⁶ In brief, it provided that whenever a company had completed a section of twenty-five miles of road in a manner acceptable to a competent engineer, to be appointed by the Governor to make an inspection, it should be entitled to receive sixteen sections of land of 640 acres each. The land was to be surveyed by the company, at its own expense, in double the amount it was entitled to receive, the alternate sections so surveyed to remain the property of the State. To secure lands for mileage constructed after the completion of the first section, the company was required to complete at least twenty-five miles in every period of two years. The lands were to be alienated by the companies, as in the case of the Henderson and Burkville road. The act was to continue ten years.

With all this seeming liberality on the part of the State, construction proceeded very slowly and the people became more anxious for railway facilities. So, in 1856, we find the Legislature extending further aid by loans from the school fund. And still construction lagged. Accordingly an act was passed allowing the roads to receive a portion of their land—four sections to the

²⁵Gammel, Vol. III, p. 1178. This plan of granting alternate sections to the railroads and reserving the remaining sections to the State, which became a settled principle in the policy of the State, was probably borrowed from the Federal Government, as it was made use of in the grant to the Illinois Central Railway referred to. In that case a strip six miles wide on each side of the road was reserved for settlement.

²⁶Gammel, Vol. III, p. 1453.

mile—as soon as ten miles should be graded and made ready for the ties,²⁷ and finally ten sections were to be advanced as soon as five miles were so graded.²⁸

The act was to have expired in 1864, but it was twice extended,²⁹ which would have kept it alive until 1876, if it had not been rendered null by the prohibition of land grants inserted in the Constitution of 1869. This closed the period of the first general land grant act. During the period forty new companies were chartered, but only nine completed sufficient mileage to secure the benefits of the act. Some five hundred miles of weak and disconnected railway seems to have been the total result of all the generosity and fostering care bestowed upon the railroads by the people of Texas and their legislative agents.

The Congressional Reconstructionists, who were in charge of the State government after 1867, adopted a rigorous attitude toward the companies indebted to the school fund and ordered several of them sold under the sheriff's hammer to satisfy the State's claims. They also looked upon the use that was being made of the public domain as profligate, and, as a result, they wrote into their Constitution adopted in 1869, a prohibition of land grants to railways. Yet the Legislature that met the next year has always been regarded as the most corrupt and profligate legislative body that has ever assembled in Austin. This Twelfth Legislature was the one that granted State bonds to the International Railway and to the Southern Pacific and the Southern Transcontinental railway companies, as already explained. To escape the burdens of these acts the people proceeded to amend the Constitution so as to allow the Legislature to continue the settled land grant policy.³⁰ During this period of prohibition thirty-one companies were chartered and nine carried on the work of construction. Of the nine, one re-

²⁷Act of February 16, 1858, Gammel, Vol. IV, p. 1135.

²⁸Act of March 20, 1861, Gammel, Vol. V, p. 361.

²⁹Act of January 11, 1862, and Act of November 13, 1866, Gammel, Vol. V, pp. 490 and 1130.

³⁰The amendment was proposed in 1871, and voted on by the people November, 1872, and ratified by the Legislature March 13, 1873. Gammel, Vol. VII, p. 676. Major Ira H. Evans who was a member of the Twelfth Legislature says the action on the amendment was taken in response to what was believed to be the "general sentiment of the people of Texas," and to avoid "the bankruptcy of the State through granting bonds in aid of internal improvements."

ceived lands by virtue of prior legislation and seven by virtue of subsequent legislation.

With the inauguration of Governor Coke in 1874, the Democratic party returned to power and the land grant policy was resumed. In his first message Coke said: "The policy of Texas has been, since 1850, to encourage the construction of railroads by granting land subsidies. The wisdom of the policy has been vindicated by the results. * * * I recommend the utmost liberality of dealing with them. They are a necessity for Texas. The wealth of the vast interior of Texas can alone be reached through them." He urged that grants of lands be reserved for roads proposing to build into the unsettled portions of the State, lest the public domain should become exhausted and these areas be left without means of communication. But this suggestion seems not to have been acted on.³¹

During the next three years a number of special acts were passed granting lands to railways, all substantially adhering to the principles laid down in the general law of 1854, and limiting the grants to sixteen sections to the mile, except the two compromise acts substituting lands for bonds in the case of the International and Texas and Pacific roads. These companies received twenty sections per mile.³² During this period of three years forty-two companies were chartered, twelve new roads were constructed in part, and ten of them received lands by virtue of the special acts.

Up to this time all railways were incorporated by special act of the Legislature and this gave rise to much lobbying and undue influence by railway promoters who might be seeking special favors. To get rid of this evil the Constitution of 1876 provided that all railway charters should be issued in accordance with a general law and all grants of land should be made by a general law. Accordingly the Legislature in 1876 passed a general railroad incorporation act and a general land grant act.³³ The land grant act provided that railroad companies when they could show a section of ten miles completed should receive sixteen sections to the mile of completed road. The land must be alienated, one-half in six

³¹*House Journal*, 1874, p. 41.

³²See pages 94 and 95 above.

³³Gammel, Vol. VIII, pp. 977 and 989.

years and the other half in twelve years, under penalty of forfeiture.

Under these acts sixty-seven companies were chartered prior to the repeal of the land grant act in 1882. Of this number only nineteen constructed their roads, and only twelve received lands. But by 1882 the State had made provision for granting about four times as much vacant land as it had other than the one-half set aside by the Constitution as school land, and had actually issued certificates for nearly eight million acres more than it possessed. Under these circumstances, an act was passed, April 22, 1882, repealing all laws granting lands to persons for the "construction of railroads, canals and ditches."³⁴

With the passage of this act the policy of extending public aid to railway construction came to an end.³⁵

³⁴Gammel, Vol. IX, p. 263.

³⁵The following table shows the forty-one companies that received lands and the number of acres received by each company:

	Acres.
Buffalo Bayou, Brazos and Colorado.....	887,021
Houston and Texas Central.....	4,764,160
San Antonio and Mexican Gulf.....	264,898
Houston Tap and Brazoria.....	500,480
Washington County Railroad.....	236,160
Texas and New Orleans.....	1,226,880
Eastern Texas Railroad.....	291,840
Memphis, El Paso and Pacific.....	258,399
Southern Pacific.....	562,560
Texas and Pacific.....	5,167,360
Indianola Railroad.....	171,520
Galveston, Houston and Henderson.....	610,560
Columbus Tap.....	49,280
International and Great Northern.....	3,331,200
Houston and Great Northern.....	2,307,200
Waco and Northwestern.....	481,480
Galveston, Harrisburg and San Antonio.....	1,432,960
Gulf, Western Texas and Pacific.....	299,520
Dallas and Wichita.....	411,520
Tyler Tap.....	458,240
Western Narrow Gauge.....	428,160
Gulf, Colorado and Santa Fe.....	3,259,520
East Line and Red River.....	1,164,160
Galveston, Brazos and Colorado Narrow Gauge.....	157,440
Corpus Christi, San Diego and Rio Grande Narrow Gauge.....	855,680
Henderson and Overton.....	143,360
Houston East and West Texas.....	787,840
Longview and Sabine Valley.....	108,800
Denison and Southeastern.....	214,400
Georgetown Railroad.....	98,560
Central and Montgomery.....	263,040

V. Results of Public Aid.

It is very difficult to arrive at any definite conclusions in regard to the results of the State's policy of extending public aid to railways. That it hastened railway building in the State may safely be assumed. There were no roads in the State when the policy was first adopted, and about six thousand miles when it was abandoned. How much earlier the railway system was developed than it would have been developed without State aid is a matter of mere conjecture. But the population was so sparse in 1860 and 1870 that it would have been very difficult for a road to build and maintain itself without outside help. As shown elsewhere, nearly one-half of the money expended by the Buffalo Bayou, Brazos and Colorado prior to the Civil War, came from the sale of its lands and from the loans it received from the school fund.³⁶ Even in 1880, the population of the State showed an average of fewer than six persons to the square mile, and the largest cities, separated by long stretches of sparsely settled territory, contained a population of not more than twenty or twenty-five thousand.

Under such conditions it is reasonably certain that without State aid railway construction would have gone forward much more slowly than it did during the period from 1870 to 1882. It is probable that the great decrease in the mileage constructed, from 2765 miles during 1880 and 1881 to 189 miles in 1883 and 1884, was due in large measure to the repeal of the land grant act on April 22, 1882. The largest mileage constructed in any

	Acres.
Denison and Pacific.....	426,240
Waxahachie Tap.....	113,920
Texas Central.....	1,471,360
Missouri, Kansas and Texas Extension.....	272,000
Texas and St. Louis.....	942,080
Texas Trunk.....	107,520
Texas Mexican.....	556,800
Chicago, Texas and Mexican Central.....	225,280
Austin and Northwestern.....	382,720
Rusk Transportation.....	76,800

Total number of acres patented was 35,768,718, but this includes a large amount of land that has since been recovered from the companies.—*Report of the Commissioner of the General Land Office, 1898-1900, p. 33.*

³⁶See page 35. .

one year under the stimulus of the land grants was 1669 in 1881. The largest mileage since the repeal of the land grant act was 964 in 1887.

There has been much difference of opinion in regard to the value of the lands in helping the railway companies construct their lines. It is frequently said that the State practically built the railways. On the other hand it is pointed out that there were so many land certificates issued to soldiers and settlers, to canal and ditch companies and to turnpike and bridge companies, that they were bought and sold on the market at a very low price, often at only twenty or thirty cents an acre. In addition the companies had to pay the expense of locating, surveying, and plotting, not only their own lands, but an equal amount for the State, and then pay into the treasury ten dollars in fees for every section patented. The cost of locating and surveying was so heavy that, it is said, it was not uncommon for the surveyors to demand one-half of the land for locating the other half. Up to June, 1877, the Texas and Pacific Railway Company had expended \$233,000 in surveying its own lands and the State's alternate sections, had paid into the treasury \$80,400, had surveyed and sectionized for the State more than five million acres of school land at an estimated saving to the State of \$120,000, but had been able to market less than one thousand acres of the lands granted to it.³⁷ The fact that the companies were required by law to alienate their lands within limited periods of time forced them into the market in competition with each other and prevented them from holding the lands until a fair price could be obtained.

From the standpoint of the State the land grant policy was probably not an unwise one, though many abuses crept into the system during its continuance. In the first place it undoubtedly aided the State in securing a fairly efficient system of transportation facilities at a date much earlier than if no public aid had been extended. In the second place it greatly aided in the set-

³⁷Bond, *The Texas and Pacific Company's Relation to the State of Texas*. E. W. Cave, Treasurer of the Houston and Texas Central Railway Company, speaking before a legislative committee in 1882, said: "Where the railways have located the certificates instead of selling them, they have been compelled to pay \$4 for each certificate and \$6 for each patent, and from year to year have seen the lands become a tax burden, while the sales have in few cases equaled the interest on the cost of location and taxes."

tlement of the State and the development of its natural resources. The stream of immigration always flows along the lines of least resistance, which, in a region without water communication, means along the railway lines. The railways, too, having lands to sell along their routes, and realizing that a heavy traffic is impossible without a dense population, became immigration agents for the State and helped greatly to swell its numbers. The entire urban population of the State is clustered in the cities and towns, which are strung along the railway lines like beads on a string. This is true, not because the railways built to the cities, for there were few cities before the coming of the railways, but because the cities built to the railways. With the increase of population came a more than corresponding increase in the tax rolls and the fiscal resources of the State, while the increased demand for lands has added millions to the value of the lands set apart for the schools.

Another supposed benefit received by the State was the surveying and sectionizing of the public lands, which was done by the railway companies without expense to the State. This, however, seems to have been of very doubtful benefit, or even actually harmful, for many of the surveys were so poorly made that they have been a constant source of uncertainty and litigation. Under a statute passed in 1887 more than nine million acres had been resurveyed prior to 1890 at a cost to the settlers of over \$200,000, while since 1900 a large number of resurveys have been necessary to quiet "the trouble and turmoil" resulting from the poor work done by the railway surveyors of an earlier period.

Another abuse of the system, that practically amounted to fraud on the part of the railway companies, was their failure or refusal to alienate their lands as was required by law. The temptation to hold the lands was very great, for every year added to their value; and while they were held they could be used as security for loans obtained in the financial centers of Europe, where land security was highly esteemed. The sales of land, therefore, were often mere colorable transfers to officers of the company, intended to comply with the letter, but not the spirit of the law. A favorite scheme was the organization of a land company to take over the lands and manage them in the interest of the company or its creditors. Such a company was the New York and Texas Land Company, Limited, of Austin, which took over the entire land

grant of the International and Great Northern Railway, amounting to 3,331,200 acres, to manage it in the interest of the holders of the old company's second mortgage bonds. As the law requiring the alienation of the lands did not apply to these land syndicates, they could hold the lands indefinitely and retard the settlement of the State. To eradicate this evil, the Legislature in 1893 passed a law declaring that the "unrestricted ownership of lands in this State by private corporations is a perpetuity, and is prohibited," and requiring the alienation of the lands within a period of fifteen years.³⁸

In spite of abuses on the part of the railways and of reckless generosity on the part of the people and the Legislatures, Texas may fairly be congratulated on the results of the public aid she extended to railway construction. Few of the cities and counties have been very seriously burdened on account of the bonds they voted to the railroads. While the school fund suffered the loss of interest on the loans to the railways for a number of years, it came out with comparatively small ultimate losses. Although millions of State bonds were voted by the Legislature, none were actually issued, and the name of the State was not tarnished by the repudiation and bankruptcy that overwhelmed so many of the States of the West and South, as a result of their attempts to aid works of internal improvement. And, finally, the State has transferred to the tillers of the soil the ownership of a splendid public domain, and in the process of doing so has founded her charities and colleges, magnificently endowed her common schools, and secured the early construction of a transportation system which exceeds in mileage that of any other State of the Union.

³⁸Act of March 24, 1893, Gammel, Vol. X, p. 466.

CHAPTER VI.

RAILWAY REGULATION BY LEGISLATIVE ENACTMENT.

The history of the attempts of the State of Texas to regulate the operation of the railways within its borders divides itself naturally into two periods. The first extends from the beginning of the State's railway history down to the establishment of the State Railroad Commission in 1891, and is characterized by an attempt to effect the desired regulation by charter provisions and general legislative enactments that were left to be enforced by the ordinary machinery of government. The second period extends from the organization of the Railroad Commission down to the present time, and represents the State's attempt to effect the desired result through the operation of governmental machinery created especially for the work in hand. The object sought to be accomplished during each period was the same. In both, the railways were recognized as common carriers and agents of sovereignty, and it was sought to require them to perform their important functions without extortionate charges on the one hand or unjust discriminations on the other. In the present chapter an attempt will be made to give a brief account of the earlier period, leaving the creation and work of the Railroad Commission for future consideration.

I. Regulation by Charter Provisions.

Until the year 1876, all railway companies in Texas were chartered by special acts passed by the Legislature. The charters were frequently long and elaborate documents, setting forth in great detail the rights and duties of the companies and their relations to the public and to each other. The earlier charters were quite similar to the charters granted to the turnpike and bridge companies, and the charges to be collected from the public were generally referred to as tolls.

The objects sought to be accomplished by these early charter regulations seem to have been: 1, the safety of the public; 2, the co-operation of the various railway lines in handling freight and

passengers; and 3, the regulation of the charges to be made for the services rendered. Thus, to avoid accidents, it was made the duty of the company "whenever any State or county road now by law established shall be crossed by the track of said railway, to make and keep in repair good and sufficient causeways at such crossings." It is further provided that the "company shall cause to be placed to each locomotive engine passing over their road a bell of the weight of at least thirty-five pounds, or a steam whistle, and the said bell shall be rung or the whistle blown at the distance of at least eighty rods from the place of crossing any highway or turnpike, and kept ringing or blowing until the engine has stopped or passed." In order to enable the engine driver to control his train it is made the duty of the company to "have a good and sufficient brake upon the hindmost car in all trains transporting passengers and merchandise, and also permanently stationed there a trusty and skillful brakeman."¹ Good T or U shaped iron rails were to be used and a minimum weight was frequently prescribed.

To secure the co-operation of the different railway companies it was usually provided that each road should make a connection with any other road whose line it should chance to cross, and each company was required by its charter "at all reasonable times and for a reasonable compensation to draw over their road the passengers, merchandise, and cars of any other railroad." If the companies should be unable to agree upon the compensation for such service, a board of arbitrators was provided for to settle the dispute.

The provisions in the charters in regard to the rates and fares to be charged by the companies usually went no further than to fix maximum rates and leave the companies free to charge what rates they pleased within the limits thus prescribed. The first charter granted by the Republic was silent on the subject of rates and fares, but in the second charter, granted May 24, 1838, to the Galveston and Brazos Railroad Company, it is provided that Congress "shall have the sole power of regulating the rates of tolls for passing said railway."² Two years later Congress exercised the right here reserved and, for the five years following, pre-

¹Act of February 14, 1852, incorporating the Texas Central Railroad Company. Gammel, Vol. III, p. 1178.

²Gammel, Vol. I, p. 1511.

scribed that the rates should not exceed two and one-half cents per mile for every hundred pounds,³ that is, a rate equivalent to fifty cents per ton mile, as compared with an average rate of about one cent per ton mile on the roads of the State at the present time. The next charter containing a maximum rate was that of the La Vaca, Guadalupe and San Saba Railroad Company, approved May 8, 1846.⁴ This project seems not to have found favor in the Legislature's sight, for it was allowed to charge only twenty-five cents per hundred pounds "for every twenty-five miles or over," or the equivalent of twenty cents per ton mile, while passenger fares were limited to the very low rate of three cents per mile. Three days later another road was chartered and was allowed to charge five cents per mile for passengers and one and one-half cents per mile for every hundred pounds of freight.⁵ After that time, however, the maximum freight rate was usually fixed at fifty cents per hundred for every hundred miles and passenger fares at five cents per mile. An exception to these general rates was made in favor of the San Antonio and Mexican Gulf, chartered in 1850, which was allowed to collect an eight-cent fare and seventy-five cents per hundred miles.⁶

II. General Railway Regulation Act of 1853.

Many of the early charters were very loosely drawn and placed very few restrictions on the operations of the companies and their promoters. Speculation in railway stocks had begun before the first mile of track was laid, and the Buffalo Bayou, Brazos and Colorado and the San Antonio and Mexican Gulf were early guilty of issuing large amounts of fictitious stocks and bonds. These and other abuses, together with the indiscriminate granting of charters, caused Governor Bell to call the matter to the attention of the Legislature in 1853, and resulted in the enactment of the State's first general law for the regulation of railways.⁷

³Gammel, Vol. II, p. 391.

⁴Gammel, Vol. II, p. 1491.

⁵The Colorado and Wilson Creek Railroad Company, incorporated May 11, 1846. Gammel, Vol. II, p. 1524.

⁶Gammel, Vol. III, p. 814.

⁷Act of February 7, 1853. Gammel, Vol. III, p. 1339. It will be noted that this general law regulating railroads was enacted by the new State of Texas, situated as it was on the outskirts of civilization, one year

This act contains most of the principles and provisions contained in the special charters previously granted. Additional provision was made for the public safety by requiring the companies to post warnings at the public road crossings, by making it a misdemeanor for train officials to become intoxicated while on duty, and by making it a penal offense for the trainmen of a mixed train to place any baggage cars or freight cars in the rear of the passenger coaches. All roads were required to draw the cars of connecting roads, and, by an amendment adopted in 1860, any road was authorized to draw its own cars over the tracks of any connecting line that should refuse to draw them.

The act of 1853 did not fix any maximum rates and fares, but declared that the Legislature should have the right to prescribe such rates and fares every ten years, provided that no reduction should be made unless the net profits for the preceding ten years should equal twelve per cent of the capital stock, and then the reduction should not be so great as to reduce the probable future earnings below that figure. On the other hand, the companies were required to provide proper facilities and to transport all persons and freight offered, upon payment of the regularly authorized charges. They were also required to run their trains on regular schedules and to check the baggage and parcels of their passengers.

Other provisions sought to provide the State with information in regard to the operations of the companies and to fix responsibility upon them and their officers. They were required to keep their principal offices on the line of the road, to open their books to the Legislature, to make a detailed annual report to the Comptroller, and to file maps and profiles of their roads with the Commissioner of the General Land Office and with the county clerks and county surveyors of the counties through which they passed. The directors were made responsible for the debts of the company if they should declare any dividend when the company was insolvent or if the company should be rendered insolvent by such dividend.

before England passed her first great statute on the same subject. But as Texas had, as yet, had no experience with extortionate charges and unjust discriminations between persons and places, her statute hardly touched the vital questions of the railway problem with which the English law concerns itself.

An interesting provision of the law was one looking to possible State ownership of the railroads at some future time. The charter of the Rio Grande and Gulf of Mexico Railroad Company, approved February 5, 1850, provided that at the expiration of fifty years the State should have the right to purchase the road at two-thirds of its value as assessed at that time by a board of appraisers.⁸ This idea was now enlarged and incorporated in the law of 1853, where it was provided that the State might at any time purchase any or all the railroads by paying to the companies amounts equal to their cost of construction, equipment and repair to date, less the amount received by the companies as freights, tolls, and returns from the sale of lands donated by the State. No steps were taken to put this provision into effect and it was repealed in 1860.⁹

Such was the general railway regulation act of 1853. It furnished the point of departure for all subsequent legislation on the subject, and several of its sections have remained practically unchanged until the present time. It did not solve all the questions of public concern, however, and amendatory acts were passed in 1857 and in 1860.¹⁰ The former amendment dealt mainly with forced sales of railroads, while the latter, among other things, provided a penalty for over-charging. But a far more important provision of this act was the section that undertook to prevent stock watering. It provided that "no railroad company shall issue any shares of stock in said company, except at its par value and to actual subscribers who pay, or become liable to pay the par value thereof, and every officer or director of a railroad company, who shall issue, or consent to the issue of any share of stock in violation of this provision, shall become personally liable to the stockholders and creditors of said company, for the full par value thereof." The substance of this clause was re-enacted in the general railroad incorporation law adopted in 1876,¹¹ and reappears as Article 4410 of the Revised Statutes of 1895.

During the progress of the Civil War the Legislature had no time to devote to the regulation of railways, but in 1866 two minor acts were passed. One of these acts, requiring railway con-

⁸Gammel, Vol. III, p. 551.

⁹Gammel, Vol. IV, p. 1389.

¹⁰Gammel, Vol. IV, pp. 879 and 1422. See p. 1400 for act of February 4, 1860, fixing liability of common carriers.

¹¹Gammel, Vol. VIII, p. 977.

ductors to stop their trains at every "wayside station" for a period of "not less than five minutes," gives a pretty definite notion of the time made by the trains in Texas at this stage of its railway history. The other act, which required every railroad company doing business in the State "to attach to each passenger train run by said company, one car for the special accommodation of Freedmen," seems to be the State's first "jim crow law," requiring the separation of the races on the trains.¹²

III. The Maximum Rate Laws.

Until late in the seventies, the Legislature seems not to have attempted to exercise the right, reserved in the law of 1853, of prescribing a general schedule of maximum rates and fares, although there were frequent complaints of exorbitant freight rates. Especially loud were these complaints from the people living along the route of the Buffalo Bayou, Brazos and Colorado Railroad, when in 1869 the company changed from a currency basis to a specie basis without making corresponding reductions in rates and fares. A dozen or more towns banded themselves together and organized a company to haul their produce to Houston and Galveston by mule and ox trains in competition with the railroad.¹³

¹²Gammel, Vol. V, pp. 1011 and 1015.

¹³This company was known as the East and West Colorado Transportation Company. The towns that entered it were Frelsburg, New Ulm, Industry, Rogersmill, Roundtop, Ruttersville, Fayetteville, La Grange, High Hill, Flatonia, Prairie Point, and Hallettsville, while Catspring, Gonzales, Winchester, Bastrop, and other towns were expected to join later. In three days' time a force of thirty-nine wagons and teams were subscribed, giving each town in the league a train of three wagons. It was expected to increase the wagon trains until each town should have a train to arrive every three days, "so that nobody will any more be compelled to patronize this B. B., B. & C. Company, because it is plain that this new company is just as mean as the old one ever has been. * * * Besides, it takes from three to four weeks to get any goods from Galveston to Columbus, or produce from there to Galveston, and when after so long a delay the goods arrive, they are either out of season or damaged or stolen. Claims for such lost or broken goods are never or very rarely paid by the company." The charges were to be seventy-five cents per hundred pounds for every hundred miles. It was believed that at this rate most of the business could be taken away from the railroad, "for nobody doubts that the present railroad system, if allowed by the government to be carried on as at present, will ruin this section of country. These Boston gents may think that their money will control Texas, but we will show them that Texas oxen and mules will outrun their railroad by a good deal." (A writer in *Flake's Commercial Bulletin*, January 7, 1869.)

The Houston and Texas Central, too, came in for much abuse. Even by a legislative committee, in 1871, the tariffs of this road were denounced as "exorbitant," and the company itself was spoken of as an "incubus" and an "oppressive monopoly."¹⁴ In his message to the Legislature in 1870, Governor Davis urged the passage of a law to establish "a fair and moderate tariff of charges,"¹⁵ but no action seems to have been taken in response to this suggestion.

By 1875, these complaints had become so common that the Constitutional Convention that met in that year took notice of them and inserted some strong provisions in the new constitution. Article X, Section 2, after declaring the railroads to be public highways and railway companies to be common carriers, says: "The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State; and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties." Another section forbids the granting of rebates,¹⁶ while still other provisions require the companies to maintain general business offices within the State and prohibit the consolidation of parallel and competing lines, or the consolidation of a Texas road with any road incorporated in another State.

In accordance with these mandatory provisions in the Constitution, the Legislature in 1879 passed a law making fifty cents per hundred pounds for every hundred miles the maximum charge for the transportation of freight. This maximum rate, it will be observed, is about ten times the present average rate for all the freight handled on the roads of Texas, though but slightly higher than the rate now allowed on the highest class of merchandise. The same act prohibited any unjust discrimination against persons or places, and declared that a higher charge to one person than to another for a similar service should be accepted as *prima facie* evidence of unjust discrimination.¹⁷ In 1883 an act was passed elaborating these principles and providing for the

¹⁴*House Journal*, 1871, p. 945.

¹⁵*House Journal*, 1870, p. 21.

¹⁶Art. XVI, Sec. 25.

¹⁷Gammel, Vol. VIII, p. 1417.

appointment of a State Engineer to inspect the roads and look after the public safety.¹⁸

One provision of the law of 1883 did much to drive the cotton business of Texas out of the State and concentrate it in St. Louis, New Orleans and other rival cotton centers. This provision was a "long and short haul" clause, which forbade a greater charge for a short haul than for a similar haul over a greater distance. The roads from North Texas points to New Orleans and St. Louis reduced the through interstate rates so low that the roads lying wholly within the State and therefore subject to the law, could not afford to meet the rates, since, to do so, they would have to make corresponding reductions on all local shipments which would bankrupt the roads. Senator C. K. Bell asserted that the "narrow gauge," that is, the present Cotton Belt, was carrying cotton to St. Louis at a lower rate than it could be carried between any two Texas towns one hundred miles apart. The cotton factory at Terrell, in shipping to many Texas towns, found it profitable to ship their goods out of the State and then back again in order to get the benefit of the low interstate rate.¹⁹ An attempt was made in 1885 to repeal the objectionable provision, but it seems not to have succeeded.

In 1882 a special session of the Legislature, called for the purpose by Governor Roberts, passed an act reducing passenger fares from five cents to three cents per mile.²⁰ This measure while pending met with vigorous opposition from the officials of the leading railways. It was argued that the country was still very sparsely settled, that the passenger traffic was very light, and that many of the roads were new and were just getting started in business.²¹

¹⁸Gammel, Vol. IX, p. 373.

¹⁹*Galveston News*, March 8, 1885. For further discussion of the subject, see same paper, February 2 and 3, 1885.

²⁰Gammel, Vol. IX, p. 263.

²¹The following table was given to show that while the roads in the Eastern States might be able to stand a reduction to three cents, the Texas roads could not:

Road—	Miles.	Passengers			Passenger Average Earnings. Rate per Mi.
		Carried.			
New York Central.....	1018	8,270,000	\$6,611,000	2.00 cents	
Pennsylvania Railroad.....	1120	7,758,000	4,500,000	2.25 cents	

But none of these arguments availed to prevent the passage of the measure. There is doubtless some truth in the contention of the railroad men to the effect that this law caused the great decrease in railway construction that followed its enactment,²² but it is altogether probable that the repeal of the land grant law, which took place at the same time, and the formation of the Huntington-Gould agreement described in Chapter IV were much more potent factors in producing that result.

In 1885 a law was passed requiring railway companies to maintain their principal offices in the State. A large number of regulative measures continued to be enacted by the Legislature until the establishment of the Railroad Commission in 1891. By that time it had come to be pretty generally recognized that the intelligent regulation of a business so vast and complicated was quite beyond the powers of a large and unwieldy body of men, most of whom were utterly ignorant of the business sought to be controlled. The fact that the Legislature, which meets only once in two years, could not from time to time adjust its rates and fares to the constantly varying needs of the commercial world, showed that it was not the proper body to attempt the regulation of the railroads, and pointed unmistakably to the necessity of a small body of experts who could devote all their time and attention to the work in hand and be constantly in session to hear the complaints of the public on the one hand and of the railways on the other. Such a body the State Railroad Commission was intended to be.²³

Road—	Miles.	Passengers Carried	Passenger Earnings.	Average Rate per Mi.
New York, Lake Erie and Western.....	1010	5,491,000	3,683,000	2.04 cents
Five leading Texas roads.....	1718	702,000	1,768,000	3.90 cents

Address of E. W. Cave, Treasurer of the Houston and Texas Central Railroad Company, before the Committee on Internal Improvements of the House of Representatives, Austin, April 15, 1882.

²²See table of railway construction, pages 42 to 44.

²³The writer does not wish to be understood as saying that the Legislature has turned over to the Railroad Commission the entire subject of railroad regulation. It exercises a vigilant oversight of the whole subject and from time to time undertakes to exercise direct control over matters that were better left to the Commission. A case in point was the attempt by members of the last Legislature to enact a two and one-half cent fare law, when, at the same time, the wisdom of taking such a step was receiving the careful consideration of the Railroad Commission.

CHAPTER VII.

THE CREATION OF THE RAILROAD COMMISSION.

I. Defects of Early Attempts at Regulation.

Viewed in the light of the experience of all the States that have attempted to effect the regulation of the railroads by general statutory enactment, it is not at all surprising that the first half century of the efforts of Texas in this direction were almost barren of practical results. Such an attempt was foredoomed to failure. In the first place, a legislative body is too large and unwieldy for such work. Then, too, the railway problem is very intricate and highly technical, and no Legislature can be expected to possess the requisite skill and training to effect its solution. Still another weakness is that the Legislature can be in session only a small part of the time, while the adjustment of the relations of the railways to the traveling and shipping public demands almost constant attention.

In the laws enacted prior to the creation of the Railroad Commission there was one fatal defect that rendered all the State's efforts at railway regulation nugatory. That defect was the absence of any governmental machinery for enforcing the laws enacted by the Legislature. The enforcement of the railroad laws was left to the courts and the ordinary officers of the government, and they proved unadapted to the task assigned them. The regulation of the railways is, in the main, an administrative function, and the courts are distinctly not administrative bodies. The inactivity of both the courts and the public officials serve as an excellent illustration of the maxim that what is everybody's business is nobody's business. The aggrieved shipper was forced either to bear his ills in silence or to begin a battle in the courts with a powerful adversary, a battle that generally carried him through all the higher courts and piled up costs and attorney's fees out of all proportion to the benefits derived in case of final victory. During the progress of the tedious litigation, he was often made to realize the danger of incurring the railway manager's ill will, and his business was not infrequently ruined by extortionate charges or

discriminations in favor of his rival in business. Such contests were so unequal and were of such doubtful benefit even when brought to a successful issue, that the average citizen bore in silence the wrongs that it seemed useless to resist.

It was to correct these defects by supplying an administrative body whose duty it should be to enforce reasonable and uniform rates throughout the State and hear the complaints of the public, that the Railroad Commission was created, in 1891. The law creating the Commission was passed only after one of the most persistent legislative and political struggles ever witnessed in the State, a struggle which lasted altogether considerably more than a decade.

II. Early Efforts to Establish a Commission.

The first suggestion of a State Railway Commission in Texas seems to have been made by Governor Richard Coke, in 1876, at a time when the "granger agitation" had resulted in the creation of railway commissions in a number of the Western States and was forcing the question of railway regulation upon the attention of Congress. This suggestion was made in his message to the first Legislature that met after the adoption of the present Constitution. "In determining your action," said he, "I recommend an examination of the system in Massachusetts, which seems to work satisfactorily. In that State, the whole subject under general law is placed in the hands of a board of three commissioners, with extensive powers and discretion, whose supervision extends to everything connected with the organization of railroad companies. They ferret out abuses, hear complaints, and bring to the notice of the proper authorities all violations of public or private right, make regular reports, suggest legislation, etc."¹

This suggestion of Governor Coke's seems to have attracted but little attention and the first important legislative fight over the question of a railroad commission came in 1881, though bills for creating a commission had probably been introduced prior to that date. The champions of the commission idea were General King, of Hopkins county, and Judge J. Q. Chenoweth, of Fannin county, Chairman of the House Committee on Internal Improve-

¹*House Journal*, 1876, p. 20.

ments. The bill, which was reported by the committee as a substitute for some ten or a dozen bills introduced by the members of the House, provided for a "Commission of Railroads and Telegraphs," to be composed of three members to be appointed by the Governor for a term of two years. The Commission was to have power to see that the railroads observed the provisions of their charters, to prescribe a uniform system of bookkeeping, to fix rates and fares, and to prevent rebating and discriminations. The bill divided the railroads of the State into two classes. Class A embraced all lines fifty miles or over in length, while Class B included the branches and short lines less than fifty miles in length. Passenger fares were to be reduced from five to three cents per mile on the roads in Class A, and to four cents per mile on the roads in Class B. An elaborate classification of all articles of commerce was provided, and maximum rates on each class were fixed, though the commission was to have a free hand in varying the rates within the limits thus prescribed.²

This bill looked like regulation with a vengeance and the railroad interests were thoroughly alarmed. A press dispatch states that "all the representative railroad men in Texas have been drawn to Austin by the pending railroad bill." About the same time—whether as a matter of mere coincidence or of premeditation and design does not appear—Jay Gould and a large party of high railroad officials set out from New York on what was probably his first tour of inspection of his Texas properties.³ The party visited all the important Texas cities, including Austin, enjoying the hospitality of the people, and giving out interviews on the great future before the State unless capital should be frightened away by hostile legislation. At Galveston, Mr. Gould gave out a two and one-half column interview on our great prosperity as a nation and the great natural resources of Texas. "But," said he musingly, "there is one peril—injudicious interferences by Congresses and State Legislatures with business.

²*Galveston News*, February 20, 1881.

³In his party were representative officials of the Western Union Telegraph Company—the bill, it will be remembered, applied to telegraph companies as well as railways—of the Union Pacific, the Missouri Pacific, the Iron Mountain, the Texas and Pacific, the International and Great Northern, the Wabash, and the Delaware, Lackawanna and Western railways, all lines in which Mr. Gould was interested.

It was legislation that precipitated the panic of 1873—the granger legislation of the Northwest some years ago cost this country more money than it will ever know. The peril is in legislation. This is the danger always.” Incidentally Mr. Gould ordered work on the Missouri, Kansas and Texas extension between Fort Worth and Waco to be discontinued until the pending measure should be finally disposed of.

The result of this first battle was a victory for the railway interests, and the bill was not enacted into law. The next year, however, the struggle was renewed with even greater vigor. Governor Roberts called the Seventeenth Legislature together in special session, in the spring of 1882, among other things, “to pass necessary laws to require railroads in the State to be kept in good condition so as to render travel and transportation on them safe and expeditious, and to prevent abuses and unjust discriminations; to regulate freight and passenger traffic and to provide practical remedies for the enforcement of such laws, not only on the companies, but on the officers who manage and control said railroads.” In his message he urged legislation to compel the railway companies to keep their roads in repair, to prevent unjust discriminations between persons and places, which he characterized as the most crying evil, and to reduce passenger fares from five to three cents per mile. But he did not favor a commission with power to fix rates, as he believed such a body unconstitutional, but instead recommended the appointment of “an engineer, inspector or advisory commissioner, to inspect and report such wrongs and evils as may exist, so that the proper remedies may be adopted and applied for their correction.”⁴

In spite of the Governor’s opposition to a commission with rate-making powers, one bill creating such a body was passed by the House and another passed the Senate. But both bills seem to have died in conference and the special session ended without any legislation for the creation of a railway commission. This special session, however, has always been remembered by the railroad men, for it was at this time that the land grant act was repealed and passenger fares were reduced to three cents.

The Eighteenth Legislature, which met in January, 1883, was quite as favorable to railway regulation as its predecessor had

⁴*House Journal*, 1882, pp. 1 and 16.

been. In his message at the opening of the session, Governor Roberts pointed out the weakness of all previous railway legislation when he said: "The great defect of our railroad laws generally has been the want of adequate and practicable remedies to enforce what is legally required of them."⁵ A few days later Governor Roberts gave way to Governor Ireland, who urged the creation of a strong commission as the way to cure the defect mentioned. "Experience has demonstrated," said he, "that some one especially charged with the duty of seeing that these institutions (the railways) perform their duty to the people is the only sure mode of protecting them. Persons with small capital cannot and will not contend for their rights when withheld by these corporations, and I therefore recommend that a commission of three or more persons be appointed to take charge of that subject."⁶ In response to this recommendation a number of commission bills were introduced in both houses. In the Senate, one by Judge A. W. Terrell provided for a commission and a State engineer, to inspect the roads and to enforce the laws against extortion and discrimination, but not "to take charge of the management of the roads, or to regulate their charges for freight."⁷

In the House, Judge Chenoweth, along with Col. L. L. Foster, of Limestone county, was again the leader of those favoring the commission idea. After an extensive hearing, during the progress of which "the Committee discovered that it was not so much the question of too high rates, as that of discriminations, overcharges in certain cases, rebates, and pooling,"⁸ a bill was reported creating a strong commission with full rate-making powers. In spite of the influence of a powerful railway lobby,⁹ this bill seemed about to be passed, when the Speaker, C. R. Gibson, of Ellis county,

⁵*House Journal*, 1883, p. 12.

⁶*House Journal*, 1883, p. 88.

⁷*Galveston News*, February 17, 1883.

⁸*House Journal*, 1883, p. 284.

⁹"The warm agitation of railway legislation during the past few days," says an Austin correspondent of the *Galveston News*, "has added numbers and strength to the railway lobby and emboldened that branch of the 'third house' to go into the thickest of the fight. There is a notable absence of the higher officers of railway corporations and more of a sprinkling of workers from the ranks of the merchant class on hand. The latter represent those shippers who thrive on favors at the hands of railway corporations and whose purposes are now fully subverted by the railways." *Galveston News*, February 3, 1883.

left the chair as the vote on the bill was about to be taken and introduced a compromise measure, purporting to regulate rates and fares, and providing for the creation of the office of State Engineer to look after the physical condition of the roads. In this way the commission bill was thrust aside and the substitute became a law.¹⁰

The effort to solve the railway problem by means of a State engineer proved a miserable failure. At the end of a two years' trial everybody was ready to give up the attempt. Even the State engineer himself was ready to quit and advised the abolition of his office. In his official report to the Governor, State Engineer J. H. Britton said: "The State has now tried the experiment of a State engineer for about eighteen months, and the question naturally arises, 'Is it a success?' From my observation and experience I answer, *emphatically*, No! The act gives the State engineer no power. He can *inspect* and *persuade* the railway companies but he has no power to *order* and *compel*. * * * I respectfully recommend that the *present office be abolished*."¹¹

In this opinion Governor Ireland fully concurred, but when the Legislature met in 1885 he did not directly renew his request for the creation of a railroad commission. However, a number of bills were introduced, some of which attempted to create commissions with only advisory powers. The House Committee on Internal Improvements again reported a bill for a commission with rate-making powers, but it was finally defeated by a vote of fifty-two to thirty-five, many friends of the commission idea voting against the bill because they had no hope of its passing the Senate. The newspaper reporter adds that "the lobbyists were much exercised, and when the fate of the measure was decided, immediately disappeared from the hall to send away telegrams."

In 1887 the fight for a commission was renewed, but with less chance of success because the administration was not favorable to the proposition. In his message, immediately after his inauguration, Governor Ross said: "The organization of a commission with powers either absolute or advisory would in the end prove but a costly and useless luxury to the people, wholly incapable of doing more than calling the attention of the public to abuses

¹⁰Gammel, Vol. IX, p. 373.

¹¹Report of State Engineer J. H. Britton, December 1, 1884.

about which they were sufficiently informed, and for the correction of which the commission could not be clothed with the necessary constitutional powers." He believed that competition was the efficient regulator of railways and he urged with much emphasis the necessity of laws to prevent consolidations and to break up pool and traffic arrangements, such as the Texas Traffic Association. "If we can prevent pooling and thereby force an honest competition for public business without discrimination against individuals or other railways, we will have made decided progress in forcing our railways to be operated on fair business principles, and can afford to overlook or ignore minor grievances which in time will most probably correct themselves."¹²

Notwithstanding this adverse recommendation by the Governor, several bills providing for the appointment of a commission were introduced in each branch of the Legislature. One of the strongest of the House bills was fathered by Cone Johnson, of Tyler. It provided for a commission of three, one of whom should be a lawyer and one a practical railroad man, to be appointed by the Governor. It gave the commission complete rate-making power as well as authority to prevent rebates, bonuses, and pooling agreements. In the Senate the fight was unusually bitter. Ex-Governor Roberts visited Austin and gave out an interview expressing the opinion that a commission with rate-making power would be unconstitutional. "But what he said or what he thinks, as respected as he is in the law, cuts no figure now. It is a hand-to-hand fight, 'a roll, tumble and gouge.' The Senators have about taken position, and now even the blast of Gabriel's horn would hardly make them quit their desks and disconcert them until they dispose of the subject."¹³ In the end a bill was passed by the House, but was killed in the Senate.¹⁴

Thus ended the fifth great legislative struggle over the question of a railway commission. Five times the friends of the proposition had met defeat, not so much for lack of numbers as for lack of organization and leadership. The Constitution, too, had proven a stumbling block, and to it must undoubtedly be ascribed the failure

¹²*House Journal*, 1887, p. 95.

¹³*Galveston News*, March 1, 1887.

¹⁴It may be of interest to note that Mr. Jay Gould made another inspection of his Texas properties while this bill was pending before the Legislature.

of the measure in the Twenty-first Legislature that assembled in January, 1889. The recognized leader of the commission forces in the House during this fight was Thomas J. Brown, of Grayson county, now a member of the State Supreme Court. Other prominent advocates of the measure were Alexander Pope, of Marshall, and R. T. Milner, of Henderson, now President of the Agricultural and Mechanical College. The leader of the opposition was Senator H. D. McDonald, of Lamar county.

A bill creating a commission with complete rate-making powers was introduced and debated at length in both houses. The debate turned largely on the constitutionality of such a measure. The constitutional question at issue was whether the Legislature could delegate the power to make rates to a commission, in view of the constitutional provision that the Legislature "shall from time to time make laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads."¹⁵ Senator McDonald argued that to create a commission with rate-making power would necessitate the delegation of this legislative function to the commission, and this he argued could not be done. He strengthened his position by quoting from Chief Justice Moore to the effect that "it is a legal axiom that the Legislature cannot delegate any of its powers unless authorized to do so by the Constitution"¹⁶ and by citing the opinion of Judge Roberts that the Legislature "cannot assume the management of roads in this State by commissioners appointed to prescribe terms of transportation and fare in any case whatever."¹⁷

Judge Brown made the principal constitutional argument on the other side of the question. He argued that the Legislature could comply with this constitutional requirement by fixing *maximum* rates as it had done, and then leave the details of rate regulation to the commission or any other agency it might see fit to establish. "If it was constitutional for the Legislature to fix and establish a maximum rate of fifty cents and empower the railroad officials to establish all other rates, how can it be unconstitutional for the Legislature to establish a maximum rate of thirty cents and

¹⁵Constitution of Texas, Art. X, Sec. 2.

¹⁶Willis vs. Owen, 43 Texas, 59.

¹⁷Speech by Senator H. D. McDonald, delivered February 25, 1889, Austin, Texas.

empower the commission to establish the other rates?"¹⁸ The answer made by Judge Brown to the argument that the passage of the commission bill would keep capital out of the State and destroy the railroads, was characteristic and shows the temper of the men now behind the commission movement. Said he: "If I had the choice to have the railroads remain and be master of the land, or that they should go and the people be free, I would prefer to bid farewell to railroads and return to the days of independence and equality."

The upshot of the matter was that the leading lawyers in the Senate were so doubtful of the constitutionality of the proposed measure that they decided that the first thing to do was to remove all question of the Legislature's constitutional right to confer the rate-making power upon a commission. Accordingly the pending bill after passing the House was put aside by the Senate, and two-thirds of both houses voted to submit for popular approval an amendment to the Constitution, empowering the Legislature to establish a rate-making commission. The proposed amendment provided that the Legislature should regulate rates and fares, correct abuses, prevent unjust discriminations and extortionate charges, and then added this significant clause: "To further the accomplishment of these objects and purposes (it) may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable."¹⁹ The amendment was to be voted on at the regular election in 1890.

III. Hogg and the Amendment.

The submission of a constitutional amendment to the vote of the people at once removed the question of railway regulation from the legislative halls to the broader field of State politics. Of the three men who became active candidates for the Democratic nomination in 1890, James Stephen Hogg, who had been Attorney General during the preceding four years, favored the commission amendment, as did also Ex-Governor Throckmorton, while Judge Gustave Cook, of Houston, opposed it. During the campaign,

¹⁸Speech by Judge T. J. Brown, of Grayson county, delivered February 7, 1889, Austin, Texas.

¹⁹Gammel, Vol. IX, p. 1199.

Throckmorton withdrew from the race on account of failing health, and left the field to Hogg and Cook.

Hogg, as Attorney General, had been active in his efforts to compel the railroads to obey the Constitution and the laws of the State. He instituted suit against the Texas Traffic Association, as a combination of parallel and competing lines, and succeeded in breaking it up.²⁰ He drove the Missouri Pacific from the State and forced it to cancel its lease of the Missouri, Kansas and Texas and the International and Great Northern. He compelled a number of companies to repair their roads and to remove their general offices back to the State.²¹ He was, therefore, the logical candidate of the friends of railway regulation.

In opening his campaign at Rusk, on April 19, Hogg championed the cause of the amendment and based his candidacy mainly on that issue. He pointed out the many abuses of which the railroads had been guilty, and especially emphasized the evils of discriminations. Not only were the railroads discriminating as between persons and places within the State, but they were "discriminating in favor of outside producers, manufacturers and business men against home people * * * From Lake Fork (the nearest sawmills) to Dallas, a distance of eighty-six miles, the rate on lumber is * * * \$80 a carload, while from the same point to Omaha, Nebraska, it is \$88 a carload. From the same point to Salisbury, in the Panhandle, the rate is \$112 a carload, while from Shreveport, Louisiana, over the same and connecting lines of road, passing through Salisbury to Auburn, Nebraska, it is \$88 a car. * * * A wagon manufacturer in Texas wrote me last year that his competitor in Illinois shipped wagons by his doors to within forty miles of him at a cheaper rate than the railroads allowed him. Of course he had to close shop. One who manufactures plows complains that he has to pay a higher rate to points within fifty miles of him than his rival, who has to ship a thousand miles. I can go on with these instances without limit, and only state facts sadly familiar to you all."²²

When the nominating convention met in San Antonio, in

²⁰Gulf, Colorado and Santa Fe Railway Company vs. The State, 72 Texas, 404.

²¹Raines, pp. 27-32.

²²Raines, pp. 48-49.

August, the commission men were in complete control, and proceeded to organize the body to suit themselves. Judge B. D. Tarlton, of Hill county, at present professor of law in the University of Texas, was made temporary chairman, and Judge J. C. Hutcheson, of Houston, was elected permanent chairman.

Judge Brown, as chairman of the platform committee, reported the following commission plank, which was adopted without amendment: "We believe that it is the right and duty of the State to regulate and control the public highways within her limits, and that effective regulation is impracticable without the agency of a railroad commission, therefore we recommend an amendment to Article X, Section 2, of the Constitution of the State, relating to railroads, submitted to a vote of the people by the last Legislature, and we demand and pledge the enactment of a law creating a commission clothed with all power necessary to prevent abuses and discriminations, and to make, establish, and maintain reasonable rates of railway charges for transportation of passengers and freight having origin and destination within the limits of this State." Hogg was nominated for Governor, with George C. Pendleton, of Bell county, as his running mate.²⁸ In the November election they were easily victorious over their Republican opponents, and the commission amendment was ratified by a large majority of the popular vote.

When the Legislature met in the following January, it was evident that a commission law would be enacted. Governor Hogg regarded the adoption of the amendment as "tantamount to a sovereign command that a railway commission should be created," and he devoted much space in his message to a discussion of the provisions that should be incorporated in the law. "The act," said he, "should fully provide for the commission's organization and support, prescribe its powers and duties in making and publishing necessary rules and regulations to govern transportation; define the kind of common carriers to be regulated, which should by all means include express companies; require detailed reports

²⁸Hogg's personality completely dominated the convention. A newspaper correspondent wrote to his paper as follows: "In all this the individuality of Hogg is the rock clung to by the mixed elements in the convention, and stands out like a clear noonday sun, causing one of his strongest and best and most ardent supporters to admit that he occupies a most perilous height."—*Galveston News*, August 14, 1890.

from railway companies of their property, liabilities and business, and of their contracts and dealings in general with persons and corporations, according to the plan of accounts directed by the commission; authorize investigations of their affairs by inspection of the corporate books and on the testimony of witnesses; have them furnish duplicate freight receipts to shippers when demanded; prohibit and punish rebates, extortion, and discrimination by them; make certain the amount of damages to become due to and subject to recovery in court by any person whose freight the company shall refuse or neglect to carry at the rate so established: prescribe a penalty to be recovered in court by the State for the violation or disobedience by them of any rate or rule adopted by the commission, and in all respects vest it with power to fully accomplish its laudable purpose—to give freedom to commerce, security to the railroads and protection to the public.” To remove the commissioners from any temptation to use their office for selfish purpose he advocated a provision prohibiting them from engaging in any commercial, agricultural, mining, or other avocation, and from owning any stock or bonds in a railway company during their terms of office, and from holding any public position of honor or profit for a period of two years after leaving office. This latter provision, he thought, would go far toward removing the railways from politics.²⁴

A bill embracing most of these recommendations was introduced in the House by Judge Brown and passed by that body. The Senate passed a substitute offered by Senator A. W. Terrell, and the differences were referred for adjustment to a free conference committee of the two houses. The committee's report was promptly passed by both houses, approved by the Governor, April 3, 1891, and, with slight amendments, is the commission law as it stands today.²⁵

²⁴Raines, pp. 58-64. The Governor's suggestion that the commissioners be disqualified from holding any other public office for a period of two years after the expiration of their terms as commissioners was not incorporated in the law. It was a wise provision and should have been adopted. The questions that come before the commission, involving the interests of the public on the one hand and of the railways on the other, can unquestionably be more fairly decided if they are wholly dissociated from the political future of the several commissioners.

²⁵Gammel, Vol. X, p. 55. Revised Statutes, 1895, Title 94, Chapter 13.

CHAPTER VIII.

THE COMMISSION'S FIGHT FOR EXISTENCE.

I. The Commission and Its Powers.

It is customary among writers on the subject to divide State railway commissions into two classes, according to the powers conferred upon them by the legislatures. In general the commissions in the Eastern States have not the power to make classifications and fix rates and fares, and are spoken of as weak, or advisory commissions, in contradistinction to those in the Western and Southern States, which usually possess those powers, and are called strong, or mandatory commissions. The Massachusetts Commission, established in 1869, is usually taken as a type of the advisory class. Briefly stated, it has the following powers:

"1. To examine railway corporations and determine whether they are fulfilling the terms of their charters and are obeying the laws.

"2. To supervise the railroads 'with reference to the security and accommodation of the public.'

"3. To investigate complaints against the railroads. It has the power to summons witnesses and examine them under oath. It may also institute investigations on its own motion.

"4. To prescribe a uniform system of keeping railway accounts, and to inspect the books and accounts of railway corporations.

"5. To act as a board of arbitration for the settlement of disputes between railroad corporations and the public.

"6. To make an annual report to the Legislature, discussing 'the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the commonwealth,' and suggesting such legislation as may seem appropriate."¹

From this list of powers of the Massachusetts Commission, it will be seen that the enforcement of the decisions of the Commission is left largely to the force of public opinion and to the sense of fair dealing on the part of the railway managers. The Texas Commission, on the other hand, does not have to depend on public

¹Johnson, *American Railway Transportation*, p. 335.

opinion for the enforcement of its decisions, for it is clothed with ample power to enforce its decrees by appropriate legal sanctions. It is one of the strongest of the mandatory commissions, and, in addition to the powers possessed by the Massachusetts Commission it has the following powers:

1. To classify freight into such general and special classes as may be found expedient.
2. To fix passenger fares and make rates for each class of freight to be transported.
3. To fix "different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice."
4. To "make rates for express companies different from the rates fixed for railroads."
5. To examine and pass upon all contracts between connecting roads for the interchange of freight and cars, empty or loaded. If connecting roads cannot agree on a fair division of joint rates, the Commission is to make such division for them.
6. To compel railroad companies to "run at least one train a day (Sundays excepted), upon which passengers shall be hauled, and the Commission shall have no power to relax this provision."
7. To investigate interstate rates in which the people of Texas are interested, and to notify the Interstate Commerce Commission and apply to it for relief when the railroad companies concerned refuse to make the proper adjustment.
8. To see that "all laws of this State concerning railroads are enforced and obeyed."

Such were the principal powers conferred upon the Texas Commission by the original act creating it, passed in 1891.² Various other powers and duties have been conferred upon it by laws passed since that time. The most important of these powers are the power to control the issue of stocks and bonds by railway corporations,³ and the power to make emergency rates to take immediate effect.⁴

The Act of 1891 provides that before the Commission shall fix any rate it shall give the railroads to be affected ten days' notice

²Revised Statutes of 1895, Title 94, Chapter 13. Gammel, Vol. X, p. 55.

³Revised Statutes, 1895, Title 94, Chapter 14. Gammel, Vol. X, p. 486.

⁴Gammel, Vol. X, p. 1105, and Vol. XI, p. 311. General Laws of Thirtieth Legislature, p. 220.

and they shall be entitled to a full hearing and have power to compel the attendance of their witnesses. Rates fixed by the Commission cannot be put into effect until after the roads have had twenty days' notice, except in the case of the emergency rates just mentioned, and the companies are required to keep printed copies of the schedule of rates posted in a conspicuous place in every depot. In suits between private parties and the railway companies the rates fixed by the Commission must be accepted as just and reasonable, but any company dissatisfied with the rates may bring a direct action against the Commission in any court of competent jurisdiction in Travis county. In such actions the burden is on the company to show the unreasonableness of the rates established.

The law gives the shipping public the freest possible access to the Commission for the purpose of having corrected any abuses of which the railroads may be guilty. Complaints may be made by "any person, firm, corporation or association, or by any mercantile, agricultural, or manufacturing association, or by any body politic or municipal organization," and such complaint must be given a speedy and impartial hearing. If the railway company is found to have done an injury without being guilty of intentional wrongdoing, it is to be called upon to pay the damages suffered by the complainants and the costs of the hearing. If it has been guilty of willful violation of the law, the Commission shall institute proceedings in the proper court to recover the penalty prescribed by law for such wrong, as well as the damages and the costs. Evidence taken before the Commission may be used by either party in the trial before the court. Extortion, discrimination, rebating, false billing and other abuses are defined by the act and heavy penalties are provided for those who are found guilty of such practices.

The Commission as originally created was to consist of three members to be appointed by the Governor for a term of two years. By an amendment to the Constitution, ratified at the general election in 1894, the Commission was made elective and the term of office was changed to six years.⁵ The members of the Commission may not be interested, directly or indirectly, "in any

⁵Constitution of Texas, Article XVI, Sec. 30, as amended 1894. Gammel, Vol. X, p. 643.

railroad in this State or out of it, or in any stock, bond, mortgage, security, or in the earnings of any such road." They each receive a salary of four thousand dollars per year.

II. The Commission's Early Work.

The Commission as first constituted consisted of John H. Reagan, L. L. Foster, and W. P. McLean. Judge Reagan had been prominent in the public affairs of Texas prior to the Civil War, had served as Postmaster General of the Confederacy, and, after the restoration of Texas to the Union, had represented the State in both branches of Congress, where he took a prominent part in the creation of the Interstate Commerce Commission. When, therefore, he resigned his seat in the Senate and at a financial sacrifice returned to Texas to become a member of the Railroad Commission, he brought to that body a reputation for learning, experience, sterling integrity, and fair dealing that did much to inspire both the railroads and the public with confidence in its findings. Mr. Foster and Judge McLean had been prominent in the contest leading up to the creation of the Commission and were recognized as men of ability. The Commission met in their offices at the Capitol on June 10th, 1891, and organized by electing Judge Reagan chairman and appointing a secretary, Mr. J. J. Arthur, now chief rate clerk to the Commission.

When the Commission began its work it found in existence a system of freight rates adopted by the railroad companies, composed in part of mileage rates for short distances, and of blanket or common point rates for longer distances. By a blanket or common point rate is meant a rate that varies according to the weight and classification of the commodity to be shipped, but not according to the distance it is to be carried. It is the principle adopted by the Postoffice Department in the transportation of the mails, the charge being the same whether the letter or parcel is to go ten miles or a thousand. "The Commission adopted the mileage basis of rate making; that is to say, it fixed a charge per one hundred pounds per each shipment, based on distance and the service performed by the carrier in transporting it."⁶

⁶First Annual Report, Railroad Commission of Texas, 1892, p. 9. This statement is not strictly accurate, though from the rate sheet published in this report it would seem that the mileage rate was made to apply

"We believed," said the Commission, "that many of the rates we found in existence were excessive, and were strengthened in this belief by the practice which prevailed with many, if not with all the roads, of carrying freight at less than their published rates. And on most of the commodities on which we have made rates we have made some reductions. In some cases we increased the rates, but relatively we kept the rates higher than the rates on interstate shipments to and from this State, and generally, though not in all cases, we made our rates higher than the rates on the same commodities in other States." Many of the reductions were made on the application of the railroads themselves. The Commission reported that it had "abundant evidence showing that many, if not all, the railroad companies of Texas, allowed rebates and special rates much below their published rates, and in many cases much below any rate which has been established by this Commission." This evil had largely been abolished.

The results of the reforms wrought by the Commission seem to have been quickly apparent. In December, 1892, a year and a half after the Commission was organized, it was able to report that "the reduction of the freight rates on grain, cotton, lumber, live stock, salt, cotton seed, coal, lime, cement, etc., gave activity in their movement. It caused the construction of flour mills and elevators, and the manufacture of flour to an increased extent in this State, and saved the expense, to that extent, of the transportation of our wheat to Missouri and Kansas to be made into flour and shipped back to us, and saved to our people the bran and shorts resulting from such shipments. It by these means caused an increase in the price of wheat, to the profit of the farmers, and a reduction in the cost of flour, to the profit of the consumers. It caused the construction of cotton seed oil mills, and increased the value and use of cotton seed and its products. It caused a large increase in the manufacture of salt, and enabled the makers to market their salt in all parts of the State, whereas, under the rates theretofore established by the railroad companies, our salt makers could only supply a very limited part of the territory of the State, because salt was shipped from Kansas and Michigan

to much greater distances than it had done before. The Commission's method of rate-making will receive fuller consideration in a subsequent chapter, p. 158.

to a large part of the State at lower rates than from the salt manufactories of Texas to the same points. It enabled the farmers of Texas to market their surplus of corn in the State, while before the Commission rates were adopted the railroads brought corn from Kansas and Missouri to a great part of the State of Texas at less cost than from one point to another in Texas. It stimulated the manufacture of the products of iron, of pottery, of lime, cement, and other things, much to the benefit of the people of Texas. And on the cost of the shipment of the single article, cotton, it saved to the people of the State more than one million dollars in one season, and still left the rates on cotton, as reduced by the Commission, from 50 to 75 per cent higher than in any other State."⁷

III. The Commission Attacked in the Courts.

While the Commission had apparently made an excellent beginning, its work was soon brought to a standstill as the result of an action in the Federal courts that threatened the very existence of the Commission itself. On April 30, 1892, the Farmers' Loan and Trust Company, of Baltimore, Md., filed suit in the Circuit Court of the United States for the Western District of Texas against the railway commissioners, Attorney General Culberson, the International and Great Northern Railway Company, and Thomas M. Campbell, receiver of that company, now Governor of Texas. The Trust Company was the trustee of certain holders of the bonds of the Railway Company and it filed the suit as their representative. The purpose of the suit was to restrain the defendants from enforcing the rates established by the Commission, on the ground that they were so low that they did not allow the road to earn operating expenses and interest on the bonds, and were, therefore, confiscatory. It also attacked the constitutionality of the law creating the Railroad Commission. Similar suits were brought to prevent the enforcement of the Commission rates on the Texas and Pacific, the St. Louis Southwestern, the Tyler Southeastern, and the Gulf, Colorado and Santa Fe. On August 22, 1892, an order was issued by the court temporarily restraining the Commission from performing the duties required of it by the

⁷First Annual Report Railroad Commission of Texas, 1892, p. 14.

Act of 1891 and prohibiting the Commission and the Attorney General from instituting suits for the recovery of the penalties prescribed by law for the violation of its provisions, so far as related to the International and Great Northern and the four other companies just mentioned. Later, upon the application of the Galveston, Harrisburg and San Antonio Railway Company, the restraining order was extended to the roads of that company.

There were thus presented two entirely distinct questions: (1) The constitutionality of the law creating the Commission; (2) the reasonableness of the rates which the Commission had established. At first the Commission and the Attorney General prepared to contest both questions, but, in order to secure an early decision of the Supreme Court of the United States on the constitutionality of the law, without the long delays that would likely result from an effort to establish the reasonableness of the rates as fixed by the Commission, they decided to withdraw the answers as to the facts of the cases and base the appeal on the constitutional question only. The case of the International and Great Northern Railroad Company was selected as a test case and carried to the Supreme Court. That tribunal decided that the Commission law was constitutional, but permanently enjoined the enforcement of the rates already established.*

During the progress of this litigation, which covered a period of more than a year and a half, the work of the Commission was completely stopped. It is true the temporary injunction issued on August 22, 1892, applied to only six railroads, but it was found impossible to enforce the Commission rates upon the roads not included in the decree. The railway companies, therefore, speedily revived all the rates and practices that were in vogue prior to the creation of the Commission. "This action was soon followed by periodical rate cutting, mainly between interstate lines, to the great detriment of State interests, which were without any protection whatever. On these occasions local manufacturers and dealers look on in idleness, while foreign interests supply home demands at rates of transportation that are denied to them, and they are powerless to prevent such unjust discrimination. Gradually the rate situation in Texas has grown worse, until the present year a general rate war, inaugurated by interstate lines,

**Reagan vs. Farmers' Loan and Trust Company*, 154 U. S., 362.

has resulted in the promulgation of rates on some articles beside which those adopted by the Commission, and pronounced by the railroads confiscatory and ruinous, would be excessively high. Regarding these rates, it may be stated that they are lacking in the quality of uniformity and stability, so necessary to promote the industrial and commercial interests of the country, and have not benefited either the railroads or the people.”⁹

The victory in the courts restored the Commission to power and in July, 1894, it again took up the work of rate regulation that had been interrupted nearly two years before. In the meantime a great political struggle involving the question of an effective railway commission had been brought to a finish.

IV. The Political Attack on the Commission.

While the litigation just described was in progress, the dominant political party in Texas was engaged in what was undoubtedly the fiercest factional fight it has ever experienced in the history of the State. This was the famous Hogg-Clark contest which was settled at the polls in November, 1892. The friends of the Commission, as it was constituted by the Act of 1891, believed then, and most of them still believe, that the very existence of the Commission, or, at least, its effectiveness as a rate-making body, was at stake in the contest, and they have looked upon the attack in the courts as but a part of a concerted effort on the part of the opponents of railway regulation either to destroy the Commission entirely, or to discredit it and the men who had created it, in the eyes of the commercial community.

The political contest came about as a result of an effort to defeat Hogg for the Democratic nomination to succeed himself as Governor. The opposition candidate was the Hon. George Clark, of Waco, who for several years had been a prominent railway attorney, and who, at the time the Commission law was adopted, was present at Austin as attorney for all the railroads in the State save two. Prior to the adoption of the constitutional amendment, he was an opponent of a railway commission, and declared that it was “wrong in principle, undemocratic and un-republican. Commissions do no good. They do harm. Their

⁹Second Annual Report, Railroad Commission of Texas, 1893, p. 5.

only function is to harass."¹⁰ In 1890 he said: "I shall oppose the (Commission) amendment and do what I can to defeat it, as I regard it as essentially foolish and essentially vicious. It belongs to a family with whom I never expect to be on friendly terms."¹¹ But now he came forth as a friend to the commission idea. In opening his campaign at Weatherford on February 27, 1892, he denounced in bitter terms the "constitutional monstrosity" which Hogg had "driven through the Legislature under whip and spur," but declared that he would favor a conservative railway commission, and demanded that it be made completely democratic by changing it to an elective rather than an appointive commission, as then constituted. He favored such liberal laws with reference to foreign capital, and corporate enterprises in general; that the famous expression, "Turn Texas loose," became the slogan of his campaign.¹²

In opening his campaign for re-nomination, at Wills Point, April 22, 1892, Governor Hogg accepted the gage of battle thrown down by his opponent. He planted himself squarely on the Commission law as enacted by the Legislature and repelled the attacks that had been made on the members of the Commission and the work it had done. He asserted that Clark's friendship for the Commission was only a pretense and that the real object of the opposition was to get control of the machinery of government in order to deprive the Commission of all the power it possessed and leave it a regulative body in name only. The cry for an elective commission was only a ruse to hide the main object of the campaign, the destruction of the Commission. "In the present campaign," said he, "every opponent of the bill is declaring for an elective Commission; and the railway employes, who have been organizing for many months, have indiscretely exposed the real object of their leaders by declaring against a railway commission, and in the next breath demanding the election of its members. I have their resolutions adopted at more than one place, which fully explain their main object to be the destruction of the Commission itself."¹³

¹⁰*Dallas News*, July 13, 1889.

¹¹*Galveston News*, April 2, 1890.

¹²*Galveston News*, February 28, 1892.

¹³Raines, p. 151.

Hogg opposed the proposed change to an elective commission in part because, under the Constitution of the State as it then existed, the three commissioners would have to be elected every two years. This would involve the Commission in constant political turmoil and the railways would become the most active factors in politics. "If the commissioners should be made elective, then what question would they discuss before the public? What policies could they advocate? * * * There will be plenty of time for change in the method of selecting the commissioners after the opposition to the law shall have ceased. My advice to the people is that if they ever make the commissioners elective they do so by an amendment to their Constitution, fixing their term of office at four or six years, so that at each biennial election one of them can be elected. It would be bad policy to have all of them elected at the same time."¹⁴

The campaign was one of great bitterness, and Governor Hogg was denounced as a "demagogue" and the "Warren Hastings of Texas." When the nominating convention assembled in Houston on August 16, the contending forces could not agree in the organization of the convention and a split occurred. The split took place over the election of the temporary chairman of the convention. Judge Brown, of Grayson county, nominated John L. Shepherd as the Hogg candidate, while Mr. Matlock, of Tarrant county, nominated Jonathan Lane as the Clark candidate. As a result of the roll call the presiding officer declared Shepherd elected, whereupon Mr. Matlock mounted a chair and, claiming that many Clark votes had not been counted, put the name of Lane to a viva voce vote and declared him elected. "Then it was," says the chronicler, "that the convention went wild. Jonathan Lane, Mr. Matlock, Barney Zimpleman, Senator Garwood, and a small army of others proceeded to the stage. They were met at the entrance by Captain Sam Ashe, Babe Henderson, and a large number of other Hogg men, who attempted to keep them from the stage. The convention then went absolutely crazy. The delegates all rushed upon and around the stage and a perfect bedlam reigned. Yells and oaths fairly made the atmosphere lurid. In the meantime the Clark men had reached the stage and a spirited tussle ensued, though no weapons were displayed with the exception of a few pocketknives. Some of the reporters

¹⁴Raines, pp. 152-3.

jumped over the banister of the rostrum to the floor below and others were pushed over in the mad rush. The Clark men, however, took possession of the left side of the stage, while the Hogg men with John L. Shepherd as chairman occupied the right, and the two conventions coolly proceeded to business."¹⁵

Two conventions were held, each claiming to be the regular Democratic convention, and each denouncing the other as being composed of bolters. Two platforms were adopted, each declaring for the regulation of railways by a commission. The Hogg platform said, "We pledge fealty to and support of the Texas Railroad Commission law as it now exists, subject only to such changes as may become necessary to accomplish for it a greater degree of perfection. We favor an appointive commission unless the Constitution shall be so changed as to permit the election of one of the commissioners every two years and making their tenure of office six years."

The Clark platform declared that "Railroad corporations and all other corporations, being creatures of law, are subject to State regulation and control, and we favor the continuance of the present method of railway regulation by means of a commission clothed with such constitutional powers as may be requisite for the protection of the people against injustice or extortion, but we are opposed to the taking of private property for public use without just compensation." It also demanded the right to elect the members of the commission "in order that such agency shall cease to be dominated for personal and political effect."¹⁶

Both Hogg and Clark were nominated for Governor, and Clark later received the support of one wing of the Republican party in the State. At the November election Hogg carried the State by a safe majority, and a strong mandatory commission became a permanent part of the State government. In accordance with the demand of the Hogg platform, an amendment to the Constitution making the Commission elective and fixing the term of office at six years was submitted to the people by the Legislature and was ratified at the general election in November, 1894.¹⁷

¹⁵*Galveston News*, August 17, 1892. Men who were present at the convention say that this account is greatly exaggerated.

¹⁶*Austin Daily Statesman*, August 20, 1892.

¹⁷Gammel, Vol. X, p. 643.

In the opinion of the present writer, this change from an appointive to an elective commission was a mistake, though the other change, from a two-year term to a six-year term, was thoroughly wise and expedient. Hogg's original position on the subject of an elective commission was undoubtedly sound. He held that the office of railroad commissioner was a judicial rather than a political one, and should be divorced as far as possible from the turmoil of partisan politics. In his Wills Point speech he said: "Under our present Constitution the heads of the different asylums, of the penitentiaries, the reformatory, and the regents of the University, are appointed. The superintendent of the penitentiaries has under his control and management four or five thousand men, including prisoners and employes, and is in charge of the State's factories, foundry and farms. Why should he not be elected? Why should not the superintendents of the different institutions who have under their control the afflicted and charity subjects of the government be elected? If the commissioners should be made elective, then what question would they discuss before the public? What policies could they advocate? The law itself requires them to fix a classification of freight and a schedule of charges to govern the railroads, and see that they are properly enforced. On what issues could the commissioners run? It is enough for the Governor, the Comptroller, the Treasurer, the Commissioner of the General Land Office, the Attorney General, and the various district and county officers and their opponents to be turned loose in Texas to stir the political cauldron every two years. Add the commissioners to the fight, and the railways would be the most active factors in politics. Mark my words for it, they would get some, if not all their favorites on the Commission."

Probably a reason for opposing the change, quite as important as the danger of railroad influence in elections, as set out in the passage just quoted, is the fact that popular election is an extremely poor means of choosing highly educated, technically trained men for administrative positions of great responsibility. In the first place, the qualities that fit a man for such work are not generally combined with that persuasive eloquence and seductive smile which, unfortunately, still seem to play an important part in politics. In the second place, men capable of directing the affairs

of the combined railways of Texas, as the railroad commissioners must do, are apt to be in so much demand in the business world that they will have neither the time nor the inclination to make the outlay necessary to win a popular election. There is danger, therefore, that as time goes on, lawyers of first rate ability and business men of large affairs will begin to stand aside and leave these important positions to be filled by men to whom the salary appears alluring, or who have a desire for political preferment.

A more important change in the Commission law made in response to one of Hogg's platform demands was the enactment of the famous Stock and Bond Law, giving the Commission control over all future issues of railway securities. That law and the results of its operation will form the subject of the next chapter.

CHAPTER IX.

CONTROL OF CAPITALIZATION—THE STOCK AND BOND LAW.

There is probably no other phase of the railway history of Texas that is as interesting and instructive to the student of transportation problems as that which deals with the State's efforts to limit the amount of securities that may be issued by the railway companies. President Roosevelt's recent advocacy of Federal legislation for the purpose of preventing the issue of fictitious railway stocks and bonds has called public attention to the evils of overcapitalization and has helped to secure for the subject the serious consideration of Congress and many State legislatures. Under such circumstances a careful study of the fifteen years of successful experience of Texas in dealing with the subject cannot fail to be useful to the legislator in his search for an effective remedy.

I. Necessity of Public Control of Railway Capitalization.

There are many reasons that might be offered to justify the public regulation of the issue of railway stocks and bonds. Watered stocks have been sold and given away in large quantities by railway promoters and have been the basis of some of the grossest frauds ever practiced upon an unsuspecting public. Many of the great fortunes accumulated during the last half century have resulted from the manipulation of railway enterprises, made possible by fictitious issues of stock. The uncertainty as to the value of many of the securities bought and sold on the market has had a depressing effect on the value of the stocks of conservative enterprises, and has added greatly to the speculative mania that has taken possession of the American people in recent years and, from time to time, results in panics and periods of industrial depression.

A more important reason for public control of railway capitalization, however, is found in the fact that, under the decisions of the Federal courts, there can be little effective regulation of railway rates that is not preceded or accompanied by a proper limita-

tion on the amount of outstanding stocks and bonds. The Federal courts have held that any law or State regulation fixing railway rates is in violation of the Federal Constitution, unless the rates fixed are sufficiently high to allow the railway company to earn enough to pay all expenses of operation, repairs, renewals, rentals, taxes and interest on outstanding bonds, and then have something left to be distributed as dividends on the outstanding stock.

This holding seems to be based on the following line of reasoning: The Fifth Amendment to the Constitution declares that no person shall "be deprived of life, liberty, or property, without just compensation." This limitation has been held to apply to the Federal Government only, but the Fourteenth Amendment adds, "nor shall any State deprive any person of life, liberty, or property without due process of law." But, say the courts, the right to own property carries with it the right to use it and enjoy its fruits. So any statute which prevents the railroads from earning dividends is, in effect, a confiscation of the property, or a taking of "private property for public use without just compensation," since it cuts off all return to the stockholders, who, however small their actual investment may have been, are in the eyes of the law the owners of the property. Such a statute deprives the stockholders of their property "without due process of law," and is, therefore, unconstitutional and void.

It has been held that the basis of all calculations as to the reasonableness of rates to be charged by a railway company is the fair value of the property being used for the convenience of the public, and in getting at that fair value there must be taken into consideration the original cost of construction, the amounts expended in permanent improvements, the market value of its stocks and bonds, the cost of reproducing the line, operating expenses, and the probable earning capacity under the rates prescribed. Yet no cases have been found in which the courts in arriving at the fair value of the property have tried to ascertain the amount of water in the outstanding securities of a particular road or have attempted to draw a distinction between watered stocks and those that represent an actual investment. All alike, it would seem, are entitled to something in the way of dividends,

though no definite rule as to the amount of these dividends has yet been evolved.

In view of the importance of the subject, it will not be amiss to refer briefly to a few of the leading cases bearing on the right of railways to earn dividends on their stock. In the first cases that came before the United States Supreme Court, involving the question of the reasonableness of rates fixed by State laws or State railroad commissions, known as the Granger cases, decided in 1876, the court held that it had no authority to question the reasonableness of the rates fixed, that the fixing of rates was a matter of legislative discretion and the Legislature's action in such matters was final.¹ In later decisions, however, this doctrine was abandoned by the court, and in 1889 we find it stated that "the question of the reasonableness of a rate of charge for transportation by a railway company is eminently a question for judicial investigation, requiring due process of law for its determination."² After this decision for several years the courts went no further than to hold that the rates fixed by the States must afford some income above operating expenses to be distributed as dividends on the stock. But, in 1898, a Nebraska statute that allowed no dividends on some of the roads, but dividends of two, four, seven, and ten and one-half per cent on other roads, was declared confiscatory and void as to all the roads, whether remunerative under the law or not.³ In 1901, a Kansas law for the regulation of the stock yards in Kansas City was declared unconstitutional largely on the ground that it reduced the charge made for each particular piece of work to a figure, which, to the court, seemed unreasonably low, although the net profits were only reduced from eleven per cent to five and a third per cent.⁴ And finally, in March, 1908, Judge Jones, of the Circuit Court for the Middle District of Alabama, held that the railways in any State should be allowed to earn, on their property engaged in intrastate business, profits equal to the legal rate of interest fixed by the laws of that State.

¹*Munn vs. Illinois*, 94 U. S., 113; *Chicago, Burlington and Quincy Railway Company vs. Iowa*, 94 U. S., 155; *Peik vs. Chicago and Northwestern Railway Company*, 94 U. S., 164.

²*Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota*, 134 U. S., 418.

³*Smyth vs. Ames*, 169 U. S., 466.

⁴*Cotting vs. Goddard*, 173 U. S., 79.

In Alabama the legal rate of interest on money loaned is eight per cent, and after an exhaustive discussion of the subject the opinion concludes as follows: "The court, therefore, holds that these complainants (the railway companies which were seeking to enjoin the enforcement of rates fixed by the Railroad Commission) can rightly complain of any schedule of maximum rates which prevents them from earning, upon the fair value of that portion of their property employed in intrastate business, a profit, above the necessary expense of conducting such business, equal to eight per cent per annum upon the value of the property so employed, so long as the business is done without unjust discrimination, and at just and reasonable rates. Any schedule of maximum rates which prevents them from earning that much net profit, under those conditions, denies that just compensation which the Constitutions, both State and Federal, secure to them."⁵

This decision was based on analogous holdings in earlier cases,⁶ but it seems to contain a fundamental error. It holds that the railroad company is entitled to earn a profit of eight per cent, "so long as the business is done * * * at just and reasonable rates." This latter clause begs the very question at issue. Are the rates reasonable? How can the reasonableness of rates be determined except by the results they produce in the form of earnings? If the profits produced by a schedule of rates are unduly large, no other evidence is necessary to prove that the charges are extortionate, and that the public is being forced to pay more for the services rendered by the carrier than is just and reasonable.

The rule laid down in the Alabama case just mentioned has not been passed upon by the Supreme Court and cannot yet be regarded as a settled doctrine of the Federal courts, but the cases cited above fully establish the proposition that the amount of outstanding stocks and bonds has much influence in determining the court's decisions as to the reasonableness of the rates in ques-

⁵Central of Georgia Railway Company vs. Railroad Commission of Alabama, 161 Fed. Rep., 925. Since this was written this case has been reversed by the Circuit Court of Appeals at New Orleans, but on the ground that the suit should have been brought in a State court instead of the Federal Court.

⁶Louisville and Nashville Railroad Company vs. Brown et al., Railroad Commissioners of Florida, 123 Fed. Rep., 947; Spring Valley Waterworks Company vs. City and County of San Francisco, 124 Fed. Rep., 574.

tion. If railway rates are to be based, either directly or indirectly, on railway capitalization, it follows inevitably that the State must control the issue of stocks and bonds, if it is to exercise any effective control over rates and fares.

II. The Passage of the Stock and Bond Law.

After the organization of the Railroad Commission, in 1891, before any rate reductions had been ordered, "a representative of one of the roads filed before the Commission an elaborate printed argument protesting against any reduction of rates. He contended for and submitted decisions of high courts in support of the following propositions: 'The Commission cannot constitutionally establish a tariff of rates which will deprive the railway companies of the power to earn their operating expenses, interest on bonds legally issued, and some dividend on their stocks.'"⁷ This contention of the railways in the very beginning of the Commission's existence, convinced the friends of effective rate regulation that steps must be taken to prevent the further inflation of railway securities. Accordingly Governor Hogg made the stock and bond law one plank in the platform upon which he appealed to the people for re-election in the Hogg-Clark campaign of 1892.

In his opening speech at Wills Point, above referred to, Governor Hogg said: "Next to the Commission, I regard the regulation of the issuance of stocks and bonds by railway companies as the most important question affecting public interests. In both my messages I discussed this subject fully, and recommended laws to put into effect the constitutional provision defining and prohibiting the fictitious issuance of such obligations.⁸ During the last Legislature a bill passed the House on the subject, but failed in the Senate. The railways of this State, according to their sworn reports filed last October with the Comptroller, have outstanding against them \$455,250,744 in stocks and bonds, or an amount more than one-half the assessed valuation of all the property within the State, including the railways themselves; or about \$40,000,000 in excess

⁷Hogg's speech at Wills Point, April 22, 1892. Raines, p. 157.

⁸Section 6 of Article XII of the Constitution of 1876 provides that "no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void."

of the assessed value of all the lands within the State. * * * The news goes abroad, and the declaration is commonly made, that there were no railways built in Texas last year; yet during that period they have increased their bonds and stocks to the amount of over \$40,000,000. * * * I know of one road that, within a few weeks after it sold out for \$8,000 a mile, was mortgaged to secure bonds issued to the amount of \$37,000 a mile on it. I know another that sold for \$9,500 cash a mile and was immediately mortgaged to secure bonds for \$35,000 a mile. Neither of these roads was in the slightest degree improved in equipment or otherwise. There is hardly a road within the State that has not, year by year, increased its bonded indebtedness, until now they nearly all owe quadruple their value. By this illegal process millionaires are made. These roads are rendered for taxation at a valuation of \$63,000,000, yet their stocks and bonds amount to \$392,000,000 above that amount. For the last seven years these railways have increased their obligations on an average of \$30,000,000 annually. * * * If a man attempts to impose an obligation on another in writing without his consent, he is guilty of forgery and subject to imprisonment in the penitentiary. * * * What is the difference in principle distinguishing such an act from one where a corporation in fact imposes upon and makes the public pay millions it does not owe?"⁹

Such were some of the facts and arguments set forth in Hogg's public addresses. The Hogg wing of the Houston convention wrote into its platform that "we demand a law that will effectually prevent the issuance of fictitious and watered bonds and stocks by railway companies in this State, believing that these great enterprises should be conducted upon commercial principles and not as gambling devices." In his message to the Legislature that assembled in January, 1893, Governor Hogg pointed out the need of restrictive legislation as follows: "Foreign bondholders, through a Federal court, have obtained a temporary injunction suspending the rates fixed by the Railway Commission, upon the complaint, among other things, that they were not high enough, after paying the expenses of the roads, to meet the interest upon their bonds, many millions of which, with the light of truth shed upon them,

⁹Raines, pp. 156-158.

appear to be the depraved offspring of corporate abuse in violation of the express provisions of the State Constitution. By that action the point is sharply, boldly made, that the traffic rates of this country must be maintained to pay interest on all the railway bonds. It is material to the public, therefore, that none but honest bonds, issued in pursuance and within the limits of the Constitution directly, shall be permitted. * * * Fictitious bonds are not capital nor the representatives of capital. They are the fruits of crime."¹⁰ A number of important suggestions were made in the message, practically all of which were incorporated into the law, which was passed by the Legislature and approved by the Governor, April 8, 1893.¹¹

III. Provisions of the Law.

The Railroad Stock and Bond Law asserts the right of the State to regulate and control the issue of all kinds of railway securities that operate as liens on the railway properties. It is made the duty of the Railroad Commission to ascertain the value of each railroad in the State, including all its "franchises, appurtenances and property." The railway companies are given a reasonable opportunity to point out errors in the Commission's estimates, which, after necessary corrections have been made, are filed for record with the Secretary of State. Subsequent changes in these estimates may be made at the discretion of the Commission. The values thus determined are to be used as the basis of all future issues of stocks and bonds, and no bonds or other indebtedness secured by lien or mortgage on the company's property may be issued in excess of these values, except in cases of emergency involving the public interest or the existence of the property. In such cases the Commission may permit the issuance of additional bonds, but in no case shall the aggregate amount of both stocks and bonds exceed the value of the property by more than fifty per cent.

The law prescribes the method to be pursued by the railway companies in issuing new securities, whether stock or bonds. It is provided that when a company desires to issue certificates of

¹⁰Raines, pp. 206-8.

¹¹Revised Statutes of 1895, Title 94, Chapter 14.

stock a meeting of the directors shall be held at the company's principal offices within the State at which a list of subscribers shall be prepared, showing the number of shares subscribed for by each person and the amount of money, labor or property received for each share. The shares must be numbered consecutively and the accuracy of the list must be certified to by the president of the board. After a certified copy of the list has been deposited with the Railroad Commission, the secretary of the company is authorized to issue the certificates to the subscribers, each certificate to be given the number assigned to it on the list. No company may increase its stock unless all certificates of stock previously issued have been paid for in full or have been forfeited for lack of payment.

The method prescribed for issuing bonds is, in general, similar to that just described for the issue of stock. The bonds must be prepared and numbered consecutively, signed by the president, attested by the secretary, and have the company's seal attached. They are then filed with the Commission, along with a certified statement showing the amount of stocks and bonds outstanding.¹² If the Commission approves the application of the company, it directs the Secretary of State to register the bonds. This he does by listing the bonds, with their dates, amounts, rate of interest, number, time when due, and the date of registration. He then endorses upon each bond, under the seal of his office and his official signature, the words, "This bond is registered under the direction of the Railroad Commission of Texas," and no bond not so registered and endorsed shall operate as a valid lien or mortgage upon the property. No bond shall run for a longer period than thirty years or bear more than six per cent interest. Under certain restrictions bonds may be issued before the completion of the track by which they are secured, and by subsequent amendments bonds may be issued for the construction of branch lines and double tracks. The State disclaims all liability for the payment of either principal or interest on bonds issued under this act, but provides for the forfeiture of the charter and the imprisonment of the

¹²Much other information must be furnished as set forth in the rules adopted by the Commission for the government of applications for permission to issue bonds. See Sixteenth Annual Report of Railroad Commission of Texas, p. 488.

officials of any company that shall issue securities in any manner other than that prescribed.

IV. The Law in Operation.

From the foregoing analysis of the provisions of the Stock and Bond Law, it appears that two important duties were imposed upon the Railroad Commission by it, first, to determine the value of all the property and franchises belonging to the railway companies, and second to limit the amount of securities to be issued by them to the value of the property. The second of these duties is of relatively easy performance when once a just valuation of the roads has been arrived at. This, then, was the crux of the matter, to arrive at a valuation of the railroads of the State that would be fair alike to the railway companies and to the public.

As the act does not attempt to say what shall be regarded as a "reasonable value," the Commission was left to select at its own discretion the basis for making up its estimates of value. In the exercise of this discretion, the Commission chose to regard the cost of construction as the measure of the reasonable value in the case of new roads, and the cost of reproduction, or duplication, in the case of roads built before the law was passed. Accordingly the Commission's engineers were sent over every railroad in the State and estimates were made of the cost of the grading, the ties, the rails, real estate, and all other elements entering into the cost of reproducing the physical properties. Donations in the form of rights of way, depot grounds, and land grants were included in the estimates, and are valued at what it would cost to reproduce them. "Further, the Commission has a scale of construction and equipment prices which is based on an average cost of labor and materials, and the prices of this scale are the limit which the Commission will accept as a basis for the valuation of property that is purchased. For example, fifteen cents per cubic yard is allowed in the scale for excavation work. If the railroad can get its excavation work done for twelve cents per cubic yard, the valuation of such work accepted by the Commission for the issue of securities is, nevertheless, fifteen cents. Similarly, in the case of other items of construction or of equipment the opportunity is given to the railroad to profit by good

bargaining.”¹³ On the other hand, the roads are not credited, unless good and sufficient cause is shown, with amounts paid by them for actual construction in excess of the Commission’s scale of prices.

In the administration of the law, the Commission has had two classes of roads to deal with—those constructed and capitalized before the law was passed and those constructed since that time. As the new roads can issue only such securities as the Commission sees fit to approve, it is an easy matter to keep the capitalization within the limits fixed by the Commission’s valuation of the property. In the case of the old roads, however, the problem is far less easy of solution. When the law was passed, the roads were already capitalized at a figure above their actual value and the vested interest of stock and bondholders could not be interfered with. From the beginning, therefore, the Commission has had to deal with a wide margin between the actual value of the roads on the one hand and the amount of stocks and bonds outstanding against them on the other. The capitalization of the old roads could be controlled only by restricting future issues of securities, and by waiting for the old obligations to mature and be paid off.

The maturing of the old bonds will present a problem, difficult of solution alike for the Commission and the railroads. It is now an almost universal rule among railways and other large industrial enterprises to pay off one debt by the creation of another. As the old obligations become due the railways will want to issue new bonds to raise the funds with which to pay off the old bonds. Will the Commission approve such bonds in the case of roads whose capitalization is believed to be in excess of their value? If the Commission disapproves such issues, will the roads be able to raise the money elsewhere? From this distance it seems likely that unless the railroads can create a sinking fund out of earnings with which to pay off the bonds at maturity, the Commission will be forced to allow the companies to issue securities in excess of the actual value of their properties as estimated by the Commission, or the roads will be forced into the hands of receivers.

¹³*Quarterly Journal of Economics*, November, 1907, an article on “The Texas Stock and Bond Law and Its Administration,” by Mr. E. T. Miller, Instructor in Political Science, University of Texas.

Since the original Stock and Bond Law was enacted, two amendments have been passed extending somewhat the right of railway companies to issue securities. The Commission held that when a company that was already overcapitalized extended its line by the construction of branches it could not issue additional securities unless the combined actual value of the road and the extensions exceeded the outstanding securities, and then only an amount equal to the excess could be issued. This seems to have been a harsh ruling and is thought to have interfered seriously with the building of extensions, so an act was passed by the Legislature in 1901, empowering the Commission to authorize the issue of securities to an amount equal to the reasonable value of such extensions, without regard to the amount of outstanding securities against the older sections of the road.¹⁴

The other amendment was adopted in 1907, and allows roads, already excessively capitalized, to issue securities for the purchase of necessary rolling stock. It invests the Commission with power to require the roads to purchase "such rolling stock and motive power as will properly equip such common carrier and facilitate the movement of all traffic," and authorizes it to allow securities to be issued to pay for the equipment so required.¹⁵

V. The Results of the Law.

In its second annual report, issued in 1893, the Railroad Commission, in speaking of the passage of the Stock and Bond Law, said: "It is believed that the Act of the Legislature regulating the issuance of stocks and bonds, if fully and fairly enforced, will prove to be a very great benefit to both the people and the companies operating the railroads of this State. This law will prevent the unlawful and fraudulent issue of stocks and bonds of railroad companies in the future in this State and protect the people from the exactions necessary to satisfy them. It will protect the purchasers of such securities from being imposed on by them and it will secure to the companies who may hereafter build railroads a real value to their property and securities instead of a mere speculative and fluctuating value. And it will, as to

¹⁴General Laws of Twenty-seventh Legislature, p. 257.

¹⁵General Laws of the Thirtieth Legislature, p. 297.

such roads, defeat one of the most powerful agencies for the accumulation of vast fortunes by unscrupulous and dishonest men at the expense of the public."¹⁶

This prediction has, in the main, been realized. Since the law went into effect there has been a steady decline in the amount of outstanding stocks and bonds per mile of line. This result is all the more striking when compared with the situation in the United States as a whole, where there has been a steady increase in the capitalization per mile of line, or when compared with conditions in Texas prior to the adoption of the law, when, as Governor Hogg assures us, the railways were increasing the amount of their securities at the rate of thirty million dollars per year. The following table tells the story far better than it can be told in words:

On June 30th—	Mileage against which securities were outstanding.	Commission's value per mile.*	Stocks outstanding per mile.	Bonds outstanding per mile.	Total stocks and bonds per mile.	Decrease per mile.
1894.....	9,138.22	\$ 15,926	\$ 15,102	\$ 25,771	\$ 40,873	.....
1895.....	9,022.79	15,844	15,137	26,175	41,492	\$ 619†
1896.....	9,173.80	15,731	15,067	26,028	41,095	397
1897.....	9,219.91	15,731	14,730	25,503	40,233	862
1898.....	9,284.00	15,748	14,596	24,699	39,295	938
1899.....	9,522.29	15,752	14,261	24,006	38,267	1,028
1900.....	9,750.98	15,752	13,887	23,478	37,365	902
1901.....	9,894.45	15,863	13,261	23,243	36,504	861
1902.....	10,616.32	15,901	12,389	21,781	34,170	2,334
1903.....	10,988.37	16,103	12,015	21,543	33,558	612
1904.....	11,494.65	16,244	11,209	21,191	32,400	1,158
1905.....	11,662.46	16,520	10,985	21,035	32,020	380
1906.....	12,056.62	16,531	10,814	20,720	31,534	486
1907.....	12,577.60	16,746	10,460	20,385	30,845	689
1908.....	12,830.96	17,015	10,207	20,686	30,893	48†
Total reduction for 14 years.....	.....	.....	4,895	5,085	9,980	.....
Average reduction per year.....	.....	.....	394.64	363.22	712.86	.....

* The figures given in this column are the average for such of the railways of the State as had been valued by the Commission up to the dates for which the figures are given.
† Increase.

From this table it will be seen that there has been a reduction in the average capitalization per mile of about twenty-five per cent. In 1894, against a mileage of a little less than nine thousand miles on which the Commission's report gives the data, there were outstanding stocks to the amount of \$138,000,000 and bonds to the amount of \$235,000,000, or a total of \$373,000,000. In 1907, on twelve thousand six hundred miles of line, the outstanding

¹⁶Commission Report for 1893, p. 19.

stock amounted to \$132,000,000 and the bonds to \$272,000,000, or a total of \$404,000,000, including \$16,305,291 certificates of indebtedness—income bonds—issued by the Gulf, Colorado and Santa Fe Railway Company, which are not approved by the Commission. From this it appears that while the mileage for which the figures are given increased forty-two per cent, the capitalization increased only eleven per cent. As stated above, the Commission has had no control over the securities that were outstanding when the law went into effect, so practically all the reduction in the average capitalization per mile has been brought about by the limitations placed upon the issue of stocks and bonds by the roads constructed since that time.

One result of this reduction in capitalization which may be confidently expected will be the reduction of the number of railroad receiverships. With the reduction in the amount of bonds there has come a decrease of interest charges and a consequent reduction of the payments to be made out of earnings in times of financial stress. The financial stringency following the panic of October, 1907, has resulted in the bankruptcy of only one railroad in Texas, the International and Great Northern. This road was already in existence at the time the Stock and Bond Law went into effect, and its failure to meet its interest charges cannot be charged against the Commission's administration of the law. This showing is in striking contrast with the conditions prior to the passage of the law, when, in 1891, 3,357 miles of road, constituting about thirty-nine per cent of the entire mileage in the State, were in the hands of receivers, in spite of the favorable commercial conditions then existing.

It should be noted that the value of the railways, as fixed by the Commission, has not been made the basis of the rates established by it. The capitalization of the roads has been so far in excess of the Commission's values that, had rates been based on these values, they most likely would have been enjoined by the courts as confiscatory. Indirectly, however, these values have no doubt exercised considerable influence on the minds of the Commissioners in determining rates, and the law has prevented the covering up of increased earnings by increases in capitalization. Ultimately there is no doubt that the margin between the amount of outstanding securities on the one hand and the Commission's valuations on the other will be wiped out, and rates will be definitely

based on the valuation, as it will then only be necessary to allow rates sufficiently high to protect the securities outstanding by which the valuations will be represented.

It is difficult to make an estimate of the effect of the Stock and Bond Law on railway construction in Texas. It is impossible to say what would have been the increase in mileage if no such law had been passed. As a matter of fact the mileage has increased from 9088 miles in 1893 to 12,901 miles in 1908, an increase of about forty-two per cent in fifteen years. This is not an insignificant increase when it is remembered that the period embraces one of the worst financial depressions in the country's history. If the eight years since the return of prosperity in 1900 be compared with the eight prosperous years just preceding the adoption of the law in 1893, it will be found that there has been very little decrease in the rate of railway construction. Between the years 1885 and 1893, 2,400 miles of line were constructed, or an average of 300 miles per year, while during the period from 1900 to 1908, 3,050 miles were built, or an average of 381 miles per year. During the earlier period, the rate of increase was thirty-six per cent for the eight years, while for the latter period it was thirty-one per cent. It must not be forgotten, however, that many other factors have combined with the Stock and Bond Law in producing any decrease that may have occurred in the rate of construction.

It is probable that the law has had a more deleterious effect in preventing permanent improvements and betterments than in checking the construction of new mileage. The need of *better* railroads in Texas is quite as great as the need of *more* railroads. During the last year or two a number of very disastrous wrecks have resulted from the poor condition of the roadbeds, while in seasons of heavy traffic, as in the fall of 1906, serious freight blockades have occurred because the transportation lines were entirely inadequate to handle the burden of traffic placed upon them. But in spite of this evident need of betterments the railroads of the State are spending a relatively insignificant sum on permanent improvements. Although the roads were badly dilapidated in 1900 after seven lean years, the expenditure for betterments on all the roads of the State during the seven years ending June 30, 1907, was slightly less than \$20,000,000, or an average yearly expenditure of only \$250 per mile of line.

The difficulty is mainly due to the inability of the roads to raise the necessary funds for making betterments. As most of the old roads are already badly overcapitalized, according to the Commission's estimates, and therefore cannot secure permission to issue bonds, they are forced to depend upon earnings, or to borrow money on notes unsecured by mortgages on the roads and their equipment. A glance at the income accounts as given by the companies in their annual reports to the Railroad Commission, shows that in most cases the roads, after paying operating expenses, interest charges, taxes, etc., have very small balances available for improvements. In 1905, for instance, out of seventy-four roads reporting, twenty-three showed a deficit in income for the year. In the case of seventeen of these roads the deficits were due in whole or in part to the permanent improvements made by them. The debts thus created for betterments are usually classed as "floating debts," and are represented by short time notes or "income bonds," which ordinarily bear a higher rate of interest than bonds secured by mortgage.

Now, as the safety of the traveling public as well as the convenience of the business community are involved, it would seem to be the part of wisdom to allow the railway companies to issue bonds for the purpose of making permanent improvements, just as they are now allowed to issue bonds to purchase necessary rolling stock. If this were done, it would not result in an increase in the amount of overcapitalization, unless the bonds should be sold at a discount, for the money realized on the bonds would be put into the roads in the form of betterments. While the margin between real value and capitalization would be the same after the improvements as before, the percentage of overcapitalization would be reduced, and, what is far more important, the railroads would be rendered safe for travel and adequate to the demands of the commercial community.

It is probable that something could be done in this direction by the Railroad Commission, without waiting for legislative action, under the section of the original law by which the Commission is authorized to allow the road to issue securities to the extent of fifty per cent more than the actual value of the property, when the "public interest or the preservation of the property demand it." And still more could be done under this grant of authority if the

Commission should carry through a thorough revaluation of the railroads of the State, for doubtless many of them are now considerably undervalued by the Commission. The valuations now in use were made in 1894-6, when land, rights of way, terminal facilities and construction materials were at their lowest value. In addition the Commission has not given the roads any credit for the permanent improvements made by them, the general settling and seasoning of the properties, or the advance in value due to the general growth of the community. If a thorough revaluation were made by the Commission, it is believed that the margin between actual value and capitalized value would be wiped out in the case of many roads, and so reduced in other cases that the companies might issue bonds for the purpose of effecting such betterments as the Commission might order.¹⁷

¹⁷It is asserted by some members of the Commission that the present friendly receivership of the International and Great Northern was invoked to avoid compliance with the Commission's orders to the company to make certain large outlays for betterments. That the betterments were sadly needed is proven by the fatal wrecks that have since occurred on that road, two within a week of each other on the line near San Marcos. The plan suggested in the text of allowing the roads to issue bonds for permanent improvements, under the emergency clause of the original act, would help to secure the needed improvements without forcing the roads into the hands of receivers.

CHAPTER X.

WORK OF THE RAILROAD COMMISSION.

In another connection an account was given of the early work of the Railroad Commission and of the results obtained in the lowering and equalizing of rates, during the period preceding the suspension of the Commission's rates by the Federal Courts in 1892.¹ Another important branch of the Commission's work was discussed in connection with the administration of the Stock and Bond Law. It now remains to examine in somewhat greater detail the work the Commission has sought to accomplish through the rate-making and other powers with which it has been clothed, and the results that have been obtained.

I. The Commission's Classification of Freight.

The first thing to be done in fixing a schedule of railway freight rates is the classification of the articles offered for shipment into convenient groups or classes. Without some system of classification of commodities the task of the railway manager or rate clerk would be practically impossible of performance. To have a separate rate for each of the ten thousand or more articles of commerce, each rate differing for different distances, would be utterly confusing alike to the freight agents and to the shipping public. To avoid this result railway managers early adopted the practice of grouping together under a common rate a large number of articles similar in weight, bulk, value, etc.

Until about twenty years ago nearly every important railway system had its own classification, which differed in some particulars from the classifications used by other roads. This produced considerable confusion in the handling of all traffic that passed from one road to another. To obviate this difficulty committees composed of representatives from the principal roads in the several sections of the country have agreed upon three general classifications applicable to all the roads in the three larger sections

¹See page 130.

of the country. These three classifications are the "Official" classification, the "Southern" classification, and the "Western" classification. Official classification is used by the roads east of the Mississippi river and north of the Ohio; Southern classification, by the roads east of the Mississippi and south of the Ohio; and Western classification, by the roads west of the Mississippi, not including the roads leading to the Pacific coast, which use a separate classification. In several States, as Illinois, Iowa, and Georgia, classifications have been prescribed by the State Railroad Commissions, such classifications being applicable only to intrastate business.

When the Texas Railroad Commission was organized in 1891, it found the Western classification in use on all the roads of the State. As the Commission did not wish to make any sudden or revolutionary changes in the transportation business of the State, it decided to allow this classification to remain in force with such changes and modifications as the Commission might from time to time find it necessary or expedient to make. This Western classification, with the Commission's amendments, continued to be used by the Texas roads until August 1, 1906, when a new classification was made and put in force by the Railroad Commission.

The Texas classification, like the Western and Southern classifications, groups the commodities offered for transportation into ten groups or classes, and fixes a different rate for each class. The first five classes are designated by the numbers from 1 to 5, while the other five classes are lettered from A to E. The four classes numbered 1, 2, 3, and 4 include articles shipped in less than carload lots, while the other six classes apply to carload shipment only. In addition to the ten regular classes, there are five classes taking higher rates than the rates fixed for articles in Class 1. The rates for these special classes are found by multiplying the rates for Class 1 by $1\frac{1}{2}$, 2, $2\frac{1}{2}$, 3, and 4. There are also a large number of articles, usually cheap, bulky, or heavy commodities, that are not classed with any other articles, but are given individual or "commodity" rates. The Commission's report for 1907 shows forty-three such "Commodity Tariffs," including such articles as cotton, grain and grain products, coal and lignite, brick and fire clay, live stock, salt, sugar and molasses, and hides. Many of these articles could not be moved in large

quantities or over long distances if charged the same rate as lighter and more valuable articles, such as dry goods or machinery.

Thus it will be seen that nearly sixty different kinds or classes of articles are provided for in the Texas Classification. In general the Texas classification follows the lines worked out by the railroads in making their classifications, but much confusion has been avoided by limiting the number of special or "commodity tariffs." "Some roads have more than a thousand special or commodity tariffs; the New York Central Railroad, for instance, in 1899 had 1370 such tariffs in force, and the opposition of many shippers was aroused when at the beginning of 1900 a revision of the classification was made, by which 175 of these special tariffs were terminated."² The Texas classification seems to have met with general approval for, although more than two years have passed since it became effective, no serious complaint has been made either by the shippers or by the railroads.

II. The Commission's Method of Making Rates.

When the Railroad Commission was organized in 1891, it found in existence on the Texas railroads a system of freight rates composed in part of mileage rates for short distances, and of blanket or common point rates for longer distances. That is, the rates increased as the distance increased until a maximum rate was reached at a distance of 177 miles or in some cases at a distance of 187 miles. For all greater distances the rate remained the same. The charge for a haul of 500 miles was the same as for a haul of only 177 miles. But this maximum rate was applicable only in what was called "common point territory," which embraced the territory east of a line drawn through Amarillo, Abilene, Brownwood, San Antonio, and Corpus Christi. Within this region there were two sets of maximum rates, one called the "Houston Common Point Rates" and the other the "Galveston Common Point Rates." The Galveston rates were found by adding certain "differentials" to the Houston rates, while the rates to Texas common point territory from points outside the State were found by adding certain "differentials" to the Galveston rate. The following table of rates and differentials in cents per 100

²Johnson, *American Railway Transportation*, p. 117.

pounds, taken from the First Annual Report of the Railroad Commission explains the relation of these several sets of rates to each other:

	CLASSES.									
	1	2	3	4	5	A	B	C	D	E
Galveston Common Point rates.....	98	90	77	70	54	58	51	41	30	23
Houston Common Point rates.....	88	80	67	65	49	53	46	36	25	18
Houston (under Galveston rates) differentials.....	10	10	10	5	5	5	5	5	5	5
New Orleans Common Point rates.....	123	107	92	83	66	69	61	51	40	33
New Orleans (over Galveston rates) differentials.....	25	17	15	13	12	11	10	10	10	10
St. Louis Common Point rates.....	133	117	102	92	72	76	67	57	46	39
St. Louis (over Galveston rates) differentials.....	35	27	25	22	18	18	16	16	16	16
New York (via Gulf) rates.....	178	155	132	115	96	101	90	79	65	58
New York (via rail) rates.....	213	180	152	125	106	111	89	75	68	58
Ocean rates, New York to Galveston.....	80	65	55	45	42	43	39	38	35	30

The Railroad Commission at first objected to this blanket system of rates and undertook to establish a system of rates based on mileage. "This," said the Commission in its first report, "is the only equitable and just principle on which freight charges can be based, and while, owing to conditions for which the Commission is in no way responsible, it has not in all cases been adopted, it has been applied in every instance where the Commission could apply it without a too violent disturbance of business and trade relations built up under different conditions. The difference between the blanket or common point system and the mileage system can be briefly stated in a different way, as follows: The effect of the blanket or common point system is the obliteration of distance as a measure of levying freight charges, and the placing of manufacturers and producers in any given market at the same rate per one hundred pounds on their goods and wares, without reference to the distance from the point of origin to the market. The mileage system, on the other hand, has for its object the fixing of a rate of charges based on the distance an article may be transported and the cost of the services performed, and the giving to each manufacturer or producer the advantage to which his proximity to the market entitles him. Under the blanket system two persons, shipping the same kind and quantity of property widely varying distances on the same railroad, will each pay the same amount of charges, regardless of the amount of actual services rendered. What the former lacked of making a

just payment for the services rendered the latter would have to pay in excess of a just charge for the services rendered him. It is thus seen that, under this system, some parts of the people are compelled not only to pay their own freight charges, but also to pay a large part of the freight charges of other parts of the people. This is unjust, and a violation of the principle of fairness and right.”³

However just the mileage basis may in theory appear to be, it is impossible of application in actual practice, and the Texas Railroad Commission was not long in finding that this was so. In fact, the rates made by the Commission in the very beginning of its work were based on the common point principle in part. The difference between its rates and those previously in existence was that in the Commission’s rates the mileage principle was made to apply to much greater distances before a maximum was reached. After three years of effort to apply the mileage basis the Commission said: “This we believe to be the proper basis for rate-making where it can be applied, but there are so many circumstances affecting traffic, necessitating modifications or changes in mileage rates, that the theory is in many cases destroyed in practice. So varying are conditions surrounding roads in different parts of the State, and so diverse are the circumstances affecting traffic, that no iron-bound rule of action can be prescribed in the making of freight tariffs. The multifarious circumstances and conditions affecting each case must be considered, and a rate prescribed upon what appears to be the most practical basis.”⁴

The extent to which the Railroad Commission has abandoned the attempt to build a schedule of rates on mileage or the distance a commodity is hauled, may be gathered from an examination of the first general schedule of rates published by the Commission, which went into effect in August, 1895. In this schedule the mileage principle was made to apply for all distances of 187 miles and less, but for greater distances the blanket principle was made to apply. The new schedule showed considerable reductions in the rates allowed on some of the distances less than 187 miles, when compared with the rates charged before the Commission was organized, but the blanket or common point principle was as clearly

³Report for 1892, p. 9.

⁴Report for 1894, p. 4.

recognized in the new schedule as it was in the old.⁵ In the Commission's general schedule of rates now in force, the mileage principle is made to apply on distances of 245 miles and less, while the blanket principle is applied on all greater distances.⁶

As previously stated, the term common point territory is used to designate all the territory lying east of an irregular north and south line roughly separating the grazing region from that devoted more exclusively to agriculture. The line has been moved westward somewhat in recent years and now passes through Amarillo in the Panhandle, Big Springs on the Texas and Pacific, San Angelo on the Santa Fe, Brady on the Fort Worth and Rio Grande, Llano on the Houston and Texas Central, San Antonio on the Southern Pacific and on the Aransas Pass, Laredo on the International and Great Northern, and Corpus Christi on the Aransas Pass. East of this line all intra-state shipments move at common point rates, as shown in the "General Tariff of Class Rates No. 3," page 56, of the Commission Report for 1907. The application of these rates may be better understood if a concrete illustration be given. If any town, A, be chosen, no matter how small or obscure, it may be regarded as the center of a large number of concentric circles, the innermost circle having a radius of ten miles and the outermost a radius of 245 miles. Now, all shipments of first class freight from the town A to points within the inner circle take a rate of thirteen cents per hundred pounds. If the shipment passes without the inner circle but stops within the next circle, whose radius is twelve miles, the rate will be fourteen cents. That is, the rate is fourteen cents per hundred pounds on all first class freight shipped from A to points situated in the ring of territory lying between the first and the second circumference. Shipments into the next ring take a rate of fifteen cents, and for the next sixteen cents, and so on until a maximum of eighty cents is reached, which is applied to all shipments to ter-

⁵Report for 1895, pp. 6-14.

⁶Report for 1907, p. 56. The statement in the text to the effect that the mileage basis is used up to 245 miles is not strictly accurate. A strict application of the mileage basis would require the rate to increase in exact proportion to the increase in mileage. This is not true of the present or any other schedule of rates adopted by the Railroad Commission of Texas. The rates until the maximum is reached are what Prof. H. R. Meyer calls tapering rates, the rates increasing more slowly than the mileage.

ritory lying without the circle whose radius is two hundred and forty miles.⁷

The territory lying west of the line above described is sparsely settled and furnishes such a light tonnage of freight for the railroads that enter that region, that the Commission has always deemed it just and fair to allow the roads to collect higher rates for shipments to and from points lying in that territory. These rates are found by adding certain "differentials" to the common point rates, and for that reason the region is spoken of as "differential territory." But no addition is made to the common point rate unless the shipment moves more than the entire two hundred and forty-five miles, at which the maximum common point rate is reached. For an excess over that distance of twenty miles or less the differential is two cents on first class freight; that is, for a shipment of two hundred and sixty-five miles the rate would be the maximum common point rate of eighty cents plus the differential of two cents. The differentials increase as the excess distance increases, until a maximum differential of twenty-five cents is reached at an excess distance of two hundred and sixty miles, but it is provided that the total charge on first class freight on the Southern Pacific west of San Antonio and on the Texas and Pacific west of Dallas and Sherman shall not exceed one dollar per 100 pounds. The differentials apply whether the entire distance covered by the shipment is included within differential territory, or partly within and partly without differential territory.

In fixing rates on shipments of grain of all kinds the Commission has recognized the important privilege of milling-in-transit. By that is meant that the shipper can stop his grain at any point between origin and destination and have it ground into flour and reshipped without having to pay additional freight charges. Thus the grain or grain products move on the through rate from origin to destination, which is considerably lower than the sum of the

⁷This illustration, it will be noted, assumes that the railroads radiate from the town A in straight lines. The system as thus pictured is practically the same as the Austrian zone system. The first zone comprises a distance of ten miles, the next a distance of two miles, the next thirty-six zones a distance of three miles each, the next twenty zones a distance of four miles each, and the last nine a distance of five miles each. The rate on first class freight increases one cent for each of the sixty-seven zones, beginning with a minimum charge of 13 cents and ending with a maximum of 80 cents.

two local rates would be. In order to reach a desirable mill the grain may be back-hauled or carried by a circuitous route without additional cost to the shipper, unless the mileage exceeds one hundred miles. The application of this milling-in-transit principle to all shipments of grain helps to bring about a diffusion of the grain milling business in all sections of the State, whether they are grain producing regions or not.

A somewhat different arrangement has been devised for compressing cotton for long distance shipments. Stated in general terms, the rules for compression require the railroad company to compress the cotton delivered to it, at the option of the shipper, the cost, not to exceed ten cents per hundred pounds, to be paid by the railroad company out of the freight charges collected on the shipment. The cotton must be compressed at the point of origin if there is a compress in operation there; if not, at the first compress in the direct route to the point of destination. However, if the nearest compress on the carrier's line is in the opposite direction from the point of destination, the railroad may back-haul for purposes of compression, provided it be done without additional expense to the shipper.

While the Commission's rate-making authority is confined to intra-state shipments, it has been able to exercise considerable influence over interstate rates by means of what are called emergency rates. During the early years of the Commission, rate wars on interstate shipments were of frequent occurrence. At times rates on certain commodities from outside trade centers would be so low as to shut the Texas producer or wholesale dealer out of large parts of his former market. The law of 1891 required the Commission to give ten days' notice before holding a hearing on any proposed change of rate, and after the hearing the roads were entitled to twenty days' notice before the new rate should become effective. As a result great losses were frequently sustained by the Texas dealer before a rate could be investigated by the Commission and a new rate fixed and put into effect to meet the interstate rate. To meet this situation the Legislature enacted a law, in 1897, authorizing the Commission to make emergency rates to be effective at once without notice and to be continued as long as deemed necessary by the Commission.⁸ The Commission has made free use

⁸General Laws of 1897, p. 51.

of this power whenever necessary to protect local interests. The results have been quite satisfactory, as the loss to the roads of the revenue on their local as well as on their through business has tended to discourage rate wars and the resulting disturbance to business conditions.

The rate-making power of the Commission extends to the traffic handled by express companies as well as by the railroads. For some time after its organization, the Commission was occupied with the task of bringing the railway business under control, and, as a result, had but little time to devote to the express companies. In 1897, however, several hearings were held by the Commission for the purpose of investigating the express business. A general schedule of rates was formulated by the Commission, but before they went into effect the Wells-Fargo, the Pacific, and the American express companies secured an order from Judge A. P. McCormick, of the Fifth United States Circuit Court, restraining the enforcement of the rates. Later another hearing was held and a new schedule of rates was promulgated and became effective February 14, 1898. The new rates were estimated by the Commission to be about twenty per cent lower than the rates in existence prior to that time. Since that time considerable reductions have been made and a multitude of rules and regulations have been adopted to adjust the express business to the needs of the growing trucking and fruit interests of various sections of the State.

III. The Effect on Rates.

To what extent railway rates have been reduced as a result of the work of the Railroad Commission is extremely difficult to say. That material reductions have taken place since the Commission was organized seventeen years ago cannot be doubted. The average rate per ton per mile in 1891 was 1.403 cents, while in 1907 the corresponding rate was 1.039 cents, a decrease of more than twenty-five per cent.⁹ The reduction for the United States, as a whole, from 1891 to 1906, was from .875 cents to .748 cents, a decrease of 16 per cent.

It must be borne in mind in considering the subject of rate reductions that many factors besides the Railroad Commission's

⁹Report for 1907, p. 417.

work have operated to bring about the reductions that have taken place since 1891, and it is not altogether certain that rates are lower than they would have been had no railway commission been created. The great improvement in the condition of the roads and in the size and efficiency of engines and cars would of itself, in the natural order of events, have brought about a very material reduction in the rates. The increase in the amount of revenue yielding freight carried by the Texas roads from eleven million tons in 1891 to forty-one million tons in 1907 should have brought about a further reduction in rates, as it is a well recognized principle in the railroad business that the cost per ton-mile decreases rapidly as the quantity of freight handled increases. A still further reduction in the average rate has been brought about by the increase of low grade freight that must move at low rates if it moves at all, such as crude oil, lumber, coal, and gravel.¹⁰

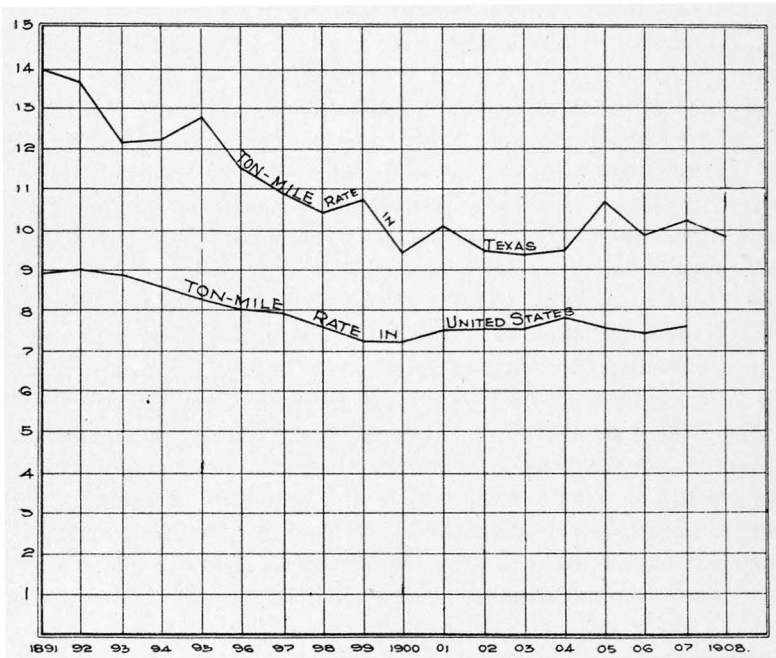
In discussing the reductions in rates, the Commission in its report for 1900 said: "The results of raising or lowering freight rates, especially if the change has been gradual, as has been the case under the action of the Railroad Commission, are almost imperceptible, but they exist, nevertheless. A striking illustration of this fact was offered in the fall of 1898, when the Commission tariffs were enjoined by a Federal judge, and the railroad companies re-adopted their old rates made during the pendency of a former injunction in 1894. Their increase of rates, above those promulgated by the Railroad Commission, caused the immediate lowering of the price of grain in the grain producing portions of the State, thus causing loss to the producers of grain, while at the same time prices were not lowered to the purchasers and consumers of grain, but was probably increased. And like effects were produced upon merchandise and commodities generally. Before the object lesson was exhibited to the people of Texas there were persons who constantly charged that freight rates were lower before the Railroad Commission was organized than under its management, but since that time such charges are not made."¹¹

Since the year 1900, however, there has been no decrease in

¹⁰These articles furnished a tonnage of 3,566,000 tons in 1891, or a little less than 33 per cent of the total tonnage. In 1907, the same articles furnished a tonnage of 17,673,000, or about 43 per cent of the total tonnage.

¹¹Report for 1900, p. 6.

freight rates in Texas as measured by the average charge per ton per mile, but instead there seems to have been a slight increase. The average rate in 1900 was .942 cents per ton mile, while in 1907 it was 1.039 cents, or an advance of ten and one-third per cent. But these figures are hardly representative, as the rate for 1900 was the lowest on record, while that for 1907 is one of the highest for any year since 1900. A glance at the accompanying diagram will show that for the last ten years the average rate has fluctuated about one cent per ton-mile, probably influenced in these fluctuations by the relative amounts of low grade and of high grade freight carried from year to year.



Ton-Mile Rate in Texas and in the United States, since 1891.

From the foregoing it would seem that the principal effect of the Commission's action on rates during the last decade has been of a negative rather than a positive. It has not lowered rates, but it has prevented the railways from raising them as they probably would have done, judging from what has happened in other sections of the country. There was a considerable increase in

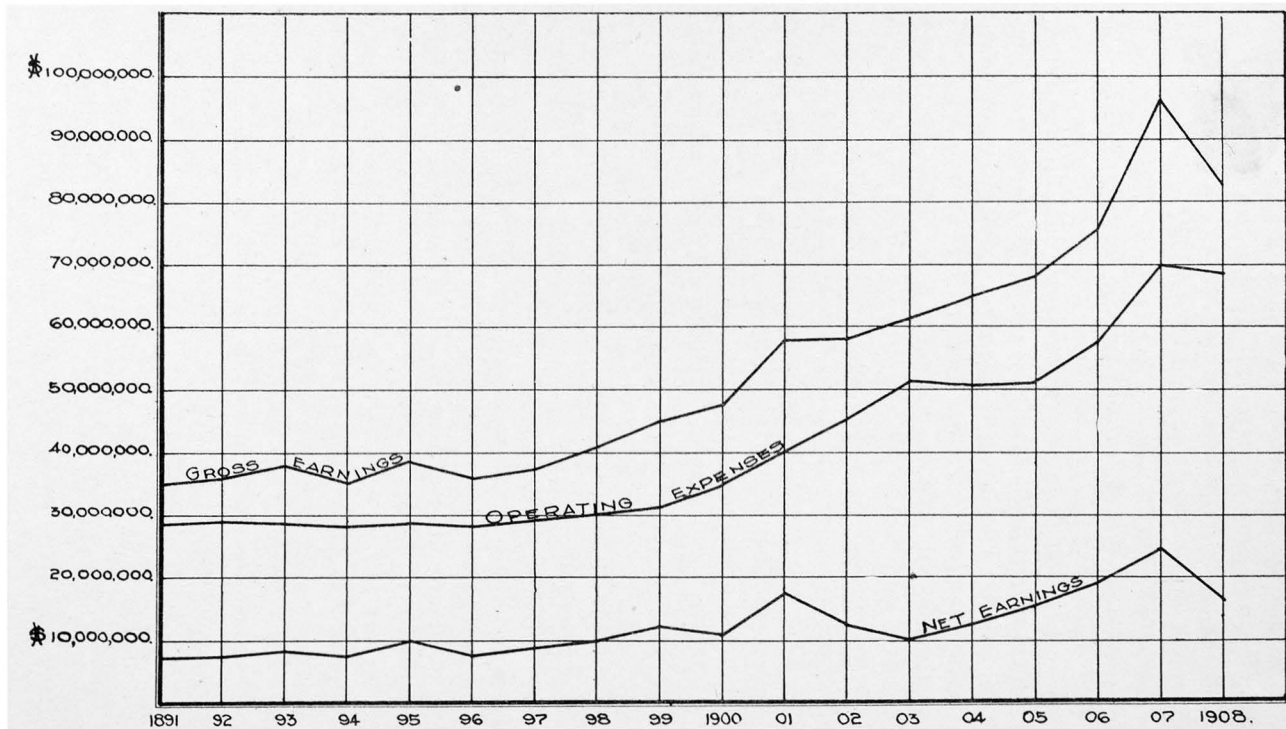
interstate rates in 1900, a seven per cent increase in 1903, and a ten to fourteen per cent increase in 1908, which the Texas Commission, through a hearing before the Interstate Commerce Commission, is now seeking to prevent.

IV. The Effect on Railway Earnings.

Just as it is difficult to form any accurate idea of what railway rates would now be in Texas if there had been no Railroad Commission, so it is difficult to estimate what effect the Commission's rate-making has had on railway earnings. If it were true, as is frequently asserted, that the Commission is responsible for the reductions in rates that have taken place since 1891, it would follow that the Commission is responsible for the loss to the roads of whatever reduction in earnings those reduced rates have brought about. That loss would be measured by the difference between the present earnings and what would have been received if the present tonnage had been carried at the rates prevailing in 1891 but for the fact that such a calculation makes no allowance for the increase in tonnage which has resulted from the decrease in rates. If the Commission is to be charged with the reduction in rates it must in all fairness be credited with the increase in tonnage resulting therefrom.

Thus the problem before us contains two unknown quantities, which renders an accurate solution impossible. To what extent, if at all, is the Commission responsible for the reductions in rates, and to what extent have these reductions increased the business of the carriers? As exact answers to these questions cannot be given, we are left to draw such conclusions as we may from a general statement of the facts relating to railway earnings during the period since the creation of the Railway Commission.

Since the creation of the Railroad Commission, the mileage in Texas has increased from 8654 miles in 1891, to 12,901 miles in 1908, or an increase of 44 per cent. During the same period revenue-paying freight tonnage has increased from 10,900,000 tons to 38,200,000 tons, an increase of 255 per cent, or 280 per cent if the tonnage for 1907 be used. Gross earnings from operation increased from \$35,666,000 in 1891, to \$96,074,000 in 1907, and \$83,190,000 in 1908, an increase to 1908 of 133 per cent, or an



Gross Earnings, Operating Expenses, and Net Earnings of Texas Railways since 1891,

increase of 169 per cent if the figures for 1907 be used. But if gross earnings have largely increased during the period, so, too, have operating expenses. In 1891 operating expenses were only \$28,762,000, while in 1908 they amounted to \$68,921,000, an increase of 140 per cent. Net earnings, which were nearly seven million dollars in 1891, have increased to eleven and one-half million in 1900, to more than twenty-five million in 1907, and then dropped back to fourteen millions in 1908. The gross earnings per mile of line have changed from \$4090 in 1891 to \$6115 in 1908, while the corresponding figures for the net earnings are \$792 in 1891, and \$1022 in 1908.

The representatives of the railways assert that the roads have suffered a large decrease in revenues as a result of the Commission's rate-reductions. They estimate that if the rates for 1907 had been as high as in 1891 the gross earnings of the roads would have been approximately twenty-three million dollars greater than they were for that year, while the total reductions in gross earnings suffered by the road during the sixteen years from 1891 to 1907 amounted to two hundred million dollars. But, in fairness to them, it should be said that they do not blame the Railroad Commission with all of this reduction, but recognize the fact that natural causes have combined with the work of the Commission to lower rates and hold down the earnings of the roads.

The railways claim that they should be allowed to advance rates in this State during periods of business activity, just as the lines in other sections have done. They assert that in periods of prosperity their operating expenses and the prices of everything they must buy advance rapidly, but the Commission refuses to allow any advance in rates, and in some cases actually lowers rates. In periods of depression the tonnage is so small, they say, that they are only able to keep alive and cannot earn enough to make extensions or betterments, or even to keep their physical properties up to a standard of safety and reasonable efficiency. Then when prosperity returns all prices advance except the price of transportation services, which is artificially held down by the Commission, and all their surplus earnings go into repairs and betterments, and little or nothing is left for the stockholders in the way of dividends.

In substantiation of these claims the railway interests point to

the fact that during the last ten years wages of all classes of labor have advanced materially, a single advance of ten per cent in the wages of all trainmen having been made in the spring of 1907. The price of some kinds of lumber used by the railways has advanced as much as 150 per cent, cross ties have more than doubled in price, car wheels have advanced 20 per cent, machine bolts 40 per cent, and steel rails 50 per cent, while similar advances have been made in all other articles used by the railroads. The amount of State and county taxes paid by the fourteen leading railroads of the State has increased from \$819,000 in 1898, to \$2,497,000 in 1907, while the claims for personal injuries paid by the companies—what is commonly known as the “damage suit industry”—have increased from \$224,000 in 1891, to \$1,824,000 in 1907, an increase of nearly 800 per cent. The amount paid for fuel by the Texas railroad companies in 1906 was \$6,153,500, or 10.81 per cent of their entire operating expenses; in 1907 they paid \$9,576,800, or 13.53 per cent of their entire operating expenses, an increase over the previous year of 55 per cent.¹²

In addition to all this the railroad people point to the statistics compiled by the Interstate Commerce Commission to show that traffic conditions are worse in Texas than in any other section of the Union. Of the ten groups into which that body divides the railroads of the United States, the group composed of the roads in Louisiana and Texas shows a smaller tonnage of freight, a lighter passenger traffic, and smaller gross earnings and net earnings per mile of line than any other group of roads in the country, not excepting the sparsely settled States of the western plateau. The amount of dividends paid by Texas roads has always been extremely small.

¹²The railroad attorneys call attention to the difference in the price of coal that the Texas roads must pay, compared with the prices paid by some of the roads in other States, as follows:

Foreign Roads—	Price Per ton.	Texas Roads—	Price Per ton.
Central of Georgia.....	\$1.44	Rock Island lines in Texas..	\$3.12
Queen and Crescent.....	1.45	Ft. Worth and Rio Grande..	2.68
Illinois Central.....	1.28	M., K. & T. of Texas.....	2.42
Kansas City Southern.....	1.78	G., H. & S. A.....	4.54
Southern Railway.....	1.35	Houston and Texas Central..	2.92
Louisville and Nashville....	1.08	Texas and Pacific.....	2.48

To all this the Commission replies that rates in Texas are not materially lower than in other sparsely settled portions of the country and are on an average nearly 40 per cent higher than for the country as a whole. That tonnage and travel are small is not due to the rates established by the Commission but to the sparseness of population and the absence of any large industrial development in the Southwestern section of the country. That the roads are not able to pay dividends is due to the fact that the companies are so heavily over-bonded that the interest and other fixed charges consume the earnings that should go to the stockholders in the form of dividends. It is also asserted that the bad financial showing is in some cases due to the "milking of the Texas roads" by the foreign corporations to which they belong, a process by which the Texas portion of the system is given less than a fair division of the earnings on joint traffic and more than a fair share of the joint expenses. Another device for accomplishing the same end is the issue of "income bonds" or "certificates of indebtedness" of the Texas company to the parent corporation, in sufficient quantity to absorb in the form of interest all the surplus earnings of the Texas road. Thus the Atchison, Topeka and Santa Fe Company holds more than sixteen million dollars of income bonds issued to it by the Gulf, Colorado and Santa Fe, bonds which the Railroad Commission refuses to recognize as a legitimate mortgage lien upon the property, but which absorb all the road's surplus earnings.

No attempt will here be made to pass judgment upon the relative merits of the two contentions just given. They are stated for what they are worth and the reader is left to place such value as he may choose upon the facts and arguments set forth. It may very well be doubted, however, whether it is altogether fair to hold the present managers and stockholders to a strict accountability for the sins of their predecessors of a quarter of a century ago, who fixed upon the properties whatever burden of over-capitalization they are now having to bear. And with still more reason may one doubt the political wisdom of such a strict policy. The logic of the situation is against it. The truth is that Texas stands greatly in need of more roads and better roads. Many millions of dollars are needed to build roads into the fifty or sixty counties that now have no roads, and into the hundred other

counties that are inadequately supplied with roads. Many more millions are needed to put the roads already in existence into a condition of complete safety and efficiency. Now, where is this money to come from? Mainly from the companies and the interests that own and control the present mileage. But these companies are already over-capitalized, if we accept the values fixed by the Railroad Commission. The bonds are an outstanding legal obligation, and, regret it as we may, the earnings for years to come will be largely absorbed in the payment of interest on the bonds. Money may be secured on extensions as soon as they are well under way, but not on betterments as the law now stands. It would seem, then, that the only way to secure the necessary betterments would be to allow sufficient earnings to meet all fixed charges and have a surplus to be used for extensions and permanent improvements. The Commission has power to require all the surplus above a reasonable return on the capital invested to be put back into the roads as betterments. It may be said that it is unjust for the people to be taxed to pay interest and dividends on fictitious securities. So it is, but it is the price that must be paid to secure the transportation facilities that the State must have. It is the penalty the present generation must pay for the failure of the one that went before to foresee the evils of over-capitalization and to place proper restraints upon the greed of the stock manipulator. But as shown elsewhere, the roads are probably very slightly over-capitalized, if at all.¹³

V. Abolition of Discriminations and Fluctuations in Rates.

There can be but little doubt that the most important results achieved by the State through the work of the Railroad Commission have been the almost complete abolition of discriminations between persons and places, and of the fluctuations in rates due to competition and rate wars. Steady and uniform rates are far more essential to the business community than low rates, and these two qualities have been secured in large measure as a result of the Commission's work. Since the establishment of the Commission there have been no rate wars in Texas and there can be none, for no road is allowed to charge either more or less than the

¹³For further discussion of this subject, see pages 193 to 196.

rate prescribed by the Commission.¹⁴ Whatever fluctuations and uncertainties in rates that still remain are due to rate wars among interstate roads over which the State has no control, and to the emergency rates occasionally adopted by the Commission as a means of protecting local interests against the evil results of such rate wars. Other changes in rates are made by the Commission only after all parties have had a chance to be heard and have had due notice of the proposed change.

At first the Commission found the prevention of discriminations a difficult task to perform. The practice was general among the railroads of the State and had been in vogue from the earliest days of railway competition. It was very difficult to secure evidence of such practice, as the discrimination usually took on the form of a secret rate, or a rebate, or a drawback, or an underbilling of freight, or a special privilege in the use of cars or terminal facilities. Complaints to the Commission were numerous, but the Commission lacked funds with which to carry on the investigations necessary to procure the evidence with which to secure convictions. The Legislature was appealed to and an appropriation of \$5000 was made for the year 1897 for the purpose of securing evidence of these frauds. Thereupon the Commission employed three expert accountants and sent them out to examine the books of the railroad companies. As a result, a large number of suits were brought for violations of the law by the railway companies and fines were collected to the amount of \$67,500 in one year's time. This went far toward putting a stop to this evil practice, and in 1899 the law was passed fixing a penalty of from two to five years in the penitentiary for any railroad official who should be found guilty of granting any rebate or unjust discrimination.¹⁵ As a result of this vigorous action by the Commission and the Legislature, rebates and other forms of discriminations have almost become a thing of the past in so far as intra-state shipments are concerned. That this is so is attested, among other ways, by the almost complete

¹⁴It should be noted that in the case of *Thompson vs. S. A. & A. P. Ry. Co.*, 32 S. W. Rep., 427, one of the Texas Courts of Appeal held that the roads might charge a lower rate than that fixed by the Commission, provided there was no discrimination. But this was only a dictum of the court and has never been acted on, either by the railways or by the Commission, and is not believed to be the law.

¹⁵General Laws of 1899, p. 203.

absence of complaints of discriminations received by the Commission.

The maintenance of uniform rates as between competing persons and places has had a most wholesome influence on the business of the community. It has resulted in the diffusion of the milling, manufacturing, and jobbing business among a large number of small towns, and has checked the abnormal growth of great centers, a tendency so manifest in many sections of the country. The small town and the small dealer are on an exact equality with the large city and the big producer, thus bringing about that equality of opportunity and that wide diffusion of wealth that are thought to be so essential to the preservation of true democracy. No intelligent person acquainted with the facts would for a moment think of returning to the turbulent business conditions existing prior to the creation of the Railroad Commission.¹⁶

¹⁶The good results accomplished by State regulation of railway rates, as here set forth, are thoroughly understood and appreciated by the leading shippers of the State. The lumber and grain interests are the heaviest shippers in the State, together furnishing about one-third of the total tonnage carried by all the railways of the State. A few years ago, Mr. John H. Kirby, president of one of the largest lumber companies in the world, said: "In my opinion the Railroad Commission of Texas has been and is a success and has accomplished great good. It has protected shippers and communities against discrimination and has lifted our transportation interests out of a whirlpool of illogical and disastrous practices of competition with each other by enforcing rates on all lines that are fair, just and uniform. It has prevented the large and powerful carrier corporations from strangling the weaker ones by enforcing just divisions of through rates between them. It has prevented the larger cities from absorbing the trade of the smaller ones by preventing rate discriminations in favor of any. Rates have been reduced, economies of management enforced, and over-capitalization prevented." ("Has the Railroad Commission of Texas Succeeded in Preventing Discrimination?" by A. Deussen, *University of Texas Record*, Vol. IV, No. 4, p. 459.)

In much the same vein Mr. H. B. Dorsey, Secretary-Treasurer of the Texas Grain Dealers' Association, expresses his opinion of the work of the Commission, and then concludes: "If I had my choice to have the Railroad Commission law abolished and continue the benefits of all other laws in the State, or to have all other laws in the State abolished and continue the Railroad Commission law and its benefits, I would choose the Railroad Commission law and abolish all others."

CHAPTER XI.

SOME CURRENT QUESTIONS.

I. Railroad Consolidations.

An account has already been given of the consolidations by which a large portion of the mileage in Texas has been combined into a relatively small number of groups or systems. It was also pointed out that most of those Texas groups are but parts of great systems lying mainly beyond the borders of the State. It remains to say a word here in regard to future consolidations and the policy to be pursued with reference to them. In discussing this subject it is necessary to keep in view the two kinds or classes of railway consolidations; first, the consolidation of lines that connect or may be connected in such a way as to form a through or continuous line, and second, the consolidation of parallel and competing lines. There have been many measures passed by the Legislature permitting consolidations of the first class and other similar propositions will undoubtedly come up for consideration in the near future.

In dealing with consolidations of this kind in the past, the Legislature has shown considerable hesitancy and uncertainty. In fact, the attitude of public men seems to be one of opposition to consolidations in general, though when individual cases are presented to the Legislature the advantages of consolidations in the particular instances are so great and so obvious that the propositions are not infrequently enacted into law. In most cases, however, certain conditions more or less onerous are prescribed, upon which the proposed consolidation is permitted to take place—a sort of salve, it would seem, to the legislator's conscience. But there seems to be no valid reasons for opposing consolidations of this character. On the other hand it would seem to be the part of good statesmanship to encourage or even in some cases to require such consolidations. The primary reason for such a policy is that the public is served far better by one through line than by several isolated or disconnected lines. It is also more economical to maintain one set of general officers and agents and to keep one

set of accounts than to maintain several—and it should be kept in mind that all useless expense of this kind must ultimately be borne by the people. Then, too, it is easier for a big system to secure funds for betterments and extensions than for several small lines to do so.

An excellent illustration of what is here suggested is found in the Santa Fe consolidation scheme presented to the Thirtieth Legislature. The Santa Fe interests had acquired complete stock ownership of four small roads in Eastern Texas, so situated that by consolidation and the construction of two links an important through line from the Red River to Galveston could be formed. The owners of the properties desired to unite them, and the industries of a large section of the State had long languished for want of just such transportation facilities as were here proposed. Yet the Governor and a large minority in the Legislature did all in their power to prevent the bill, with one of the roads omitted for supposed constitutional reasons, from being enacted into law.¹

A good illustration of railway companies that should be required to consolidate is found in the case of the four roads that form a through line from the Red River to Abilene. The Wichita Falls and Oklahoma Railway extends from the Red River to Wichita Falls; the Wichita Valley Railway extends from Wichita Falls to Seymour; the Wichita Valley Railroad extends from Seymour to Stamford; while the Abilene and Northern Railway connects Abilene and Stamford. Here we have four separate companies, all owned by the Colorado and Southern interests, keeping up four general offices and four sets of officers, for the purpose of operating a line of less than two hundred miles in length, that could better be operated as a part of the Fort Worth and Denver City Railway. A bill authorizing the consolidation of these lines was passed by the last Legislature, but was vetoed by Governor Campbell.

When we come to the second class of consolidations, there seems

¹The line omitted from the bill was the Gulf and Interstate, extending from Beaumont to Point Bolivar, opposite Galveston, a distance of about seventy-five miles. It was left out for fear that if included it would constitute a violation of the constitutional prohibition of the consolidation of parallel and competing lines. The "parallel" branch of the Santa Fe referred to extends from Beaumont northward fifteen miles to Sillsbee, thence westward some hundred and forty miles to Somerville on the main line, and then southward about one hundred and twenty miles to Galveston.

to be no very good reason, other than the constitutional provision prohibiting the union of parallel and "competing" lines, for refusing to allow such consolidations to take place, though the economic necessity for the merger of such lines is not so urgent as in the case of connecting lines. The constitution was written more than thirty years ago and was founded upon the theory then almost universally adhered to that competition was the efficient regulator of all industries, including the transportation industry. But that theory has long since been abandoned, so far as railway transportation is concerned, by practically all students of railway problems. They have reached the conclusion that permanent competition in the making of railway rates is neither possible nor desirable. It is not possible, because competition in rates leads to rate wars and they, if persisted in, always result in the financial ruin of the railways, followed by some form of pooling or consolidation. It is not desirable, because competition means a lowering of rates to secure the business of large shippers and of competitive points, which invariably results in discriminations against small shippers and non-competitive points—evils from which Texas has labored long to free herself. The transportation industry is essentially a public business, an industry appertaining to sovereignty, and it should be administered without discrimination against any persons or places. Equality of rates and fares cannot exist where active competition prevails.²

Not only have economic writers given up the idea that competition is an efficient regulator of the railway business, but the State of Texas itself has completely abandoned the theory on which the constitutional inhibition was based. There has been no competition in Texas in rate making since the Commission law became effective, except for brief periods when the Commission's powers were restrained by injunction. The railways can no more lower rates below the figures fixed by the Commission than they can raise them above those figures. The State occupies the peculiarly inconsistent position of saying to the roads with one breath, through its constitution, that they must remain apart and compete, and with the next breath, through its Commission law,

²The ideas here suggested are ably presented in an article on "Some Observations on Railroad Pooling," by Martin A. Knapp, Chairman of the Interstate Commerce Commission. *Annals American Academy of Political and Social Science*, Vol. VIII.

threatening them with severe penalties if they vary the rate a hair's breadth from that fixed by the Commission.³

If the State has ceased to depend upon competition as a means of regulating rates, so, too, has it ceased to depend upon competition to secure improvements in the quality of the service rendered by the roads. It is ordinarily stated that there are two kinds of competition; first, the competition that seeks to attract business by lowering rates, and second, the competition that would draw patronage by the quality of the service rendered. It is said that where the first form of competition has been abolished by law or by pools and rate agreements, the second form still persists and keeps the quality of the service up to a high standard of efficiency. But the State of Texas has abolished one form of competition by legislative enactment, and has ceased to depend on the other for the needed improvements and betterments. It is not intended here to deny that such a thing as competition in the service does still exist. In some localities in the State it may even be a potent factor in keeping up the standard of the service rendered by the roads. It is only intended to assert that during the last few years the State in its legislative policy has ceased to depend to any large extent upon competition, but has clothed the Commission with power to do what competition has failed to do. If the roadbed or the rolling stock of a railroad becomes defective or inadequate, or if the train service or the terminal facilities are not satisfactory, the people look, not to competition as a means of redress, but to the Railroad Commission, which has been clothed by the Legislature with ample power to bring about the desired relief. During the last two years, for example, the Commission issued orders to some forty railroad companies requiring them to purchase additional equipment, while three roads were ordered to

³The opinion expressed in the text that the railways are not at liberty to reduce rates below those fixed by the Commission is not in harmony with the opinion of Chief Justice James of the Court of Civil Appeals, in the case of *Thompson vs. The San Antonio and Aransas Pass Railway Company*, 32 S. W. Rep., 427. There it is stated "The act, as we understand it, even where rates have been fixed, does not enjoin the railway company from charging a less rate than the Commission has named, provided it makes no discrimination." But this view of the law has not been accepted either by the Railroad Commission or by the railway companies themselves—at least, they have not sought to act upon it at any time during the fourteen years since the opinion was handed down.

make large expenditures on their tracks and bridges. The fact that most of these orders have been modified or suspended on account of the depressed financial condition prevailing since October, 1907, does not disprove the fact that the State has practically ceased to depend upon competition as a regulator of the quality of the railway service as well as of railway rates.

From what has now been said the conclusion would seem to follow, first, that continuous or connecting railroads should be encouraged to consolidate or even compelled to do so where they are owned by the same interests, and second, that parallel and "competing" lines should be permitted to consolidate if it can be shown in each particular case as it arises that the interests of the railways and of the shipping public would be benefited thereby.

A further conclusion would seem to be that the State should take steps to prevent the building of parallel lines. Many millions of dollars have been wasted in this country in building parallel lines, which have done no good, but have been a continual source of expense and of disturbance to railway rates. It is an elementary principle in railway economics that one railway can do all the business moving between two cities more cheaply than two roads can do it. Since the people of Texas no longer depend upon railway competition, the money spent for parallel roads is thrown away, and worse than thrown away, because the outstanding stocks and bonds remain as a barrier in the way of future rate-reductions by the Railroad Commission. It is, therefore, suggested that in the future no railway charter should be granted until the proposed route has been submitted to the Railroad Commission for its approval, and that approval should be withheld where the proposed road will parallel or duplicate any road already in existence or for which a concession has previously been granted.

II. Shall Passenger Fares Be Reduced?

This question is one of considerable importance to the people of Texas and of more direct and vital concern to the railways of the State. It has been up for consideration before both the Legislature and the Railroad Commission, but neither body has as yet seen fit to order a reduction from the rate of three cents per mile established by the Legislature in 1882. But as a number of States

have made reductions in passenger fares within the last two years and as many public men in Texas, including the Governor and one member of the Railroad Commission, are favorable to such a measure, the question will probably again come up for consideration at the hands of either the Legislature or the Commission.

The question of reducing passenger rates in Texas came up first in the Railroad Commission in the spring of 1906 when a motion was made to reduce fares on the Houston and Texas Central Railroad, probably the strongest passenger road in the State, from three cents to two and one-half cents per mile. After a hearing on the subject the Commission ordered the reduction made, to become effective on July 1, 1906. The road at once resisted the enforcement of the order in the courts and secured a temporary injunction restraining the Commission from enforcing the rate. A motion was then made in the Commission to make the same reduction apply to all the roads of the State and the matter was set down for a hearing. When this was done practically all the railroads in the State assumed the aggressive and most of them united in bringing a suit before the Federal Court at Austin to restrain the Commission from enforcing all its rates, including all the freight rates established by the Commission as well as the reduced passenger rates. Preparations were made by both parties for one of the greatest legal battles in the history of the Railroad Commission, but the case never came to trial. While it was still pending, the hearing came on before the Commission, on the motion to reduce fares to two and one-half cents per mile on all the roads. After taking testimony for a week or more, the Commission upon reassembling on the morning of January 16, 1908, apparently for continuing the hearing, surprised the representatives of the railways by announcing that they need not introduce further evidence, as they had made a sufficiently strong showing to warrant the dismissal of the case. The order to the Houston and Texas Central was also withdrawn. To this announcement the railway attorneys promptly responded by withdrawing their suit to restrain the enforcement of the Commission's freight rates, thus disposing of what promised to be a very bitter and expensive contest.

While the passenger rate reduction was pending before the Railroad Commission, the Thirtieth Legislature met and, in response

to a suggestion in Governor Campbell's message, turned its attention, among many other things, to the question of a two and one-half cent fare. After much testimony had been heard by the legislative committees, the Legislature refused to go on record as favorable to the proposed reduction. Similar action was taken by the Thirty-first Legislature. In reaching this decision it is believed the Legislature acted wisely, even if it be granted that the railroads are able to stand a reduction in fares. This is true because, as has been stated in another connection, the Legislature by its very organization and make-up is not suited to perform such work. Another reason is that there is no surer way to destroy the dignity and usefulness of the Railroad Commission than for the Legislature to step in and undertake to do the work for which the Commission was especially created.⁴

In dismissing the case before the Railroad Commission the members of that body were influenced by the belief that under the conditions now existing the railroads were not in a position to stand any further rate reduction. It was shown that while other States had adopted a two-cent or a two and one-half cent fare, their railroads were far better able to stand such a reduction on account of the greater density of population and of passenger traffic existing in those States. Thus in 1906 New York had 173 inhabitants to the square mile, Pennsylvania had 155, Ohio had 109, Missouri had 49, South Carolina had 48, Georgia had 42, Arkansas had 27, and Texas had 13. In New York and Pennsylvania the railroads carry during the course of a year an average of about 300,000 passengers a distance of one mile for every mile

⁴The reasons here stated for opposing legislative action in fixing rates, were assigned by Governor Hughes as one of the grounds on which he based his veto of the bill passed by the New York Legislature, reducing passenger fares to 2 cents per mile. "It is practically impossible," said he, "in view of the nature of the problems and the many questions requiring consideration, for the Legislature to deal directly with railroad rates in a satisfactory manner. Where a matter requires investigation in order that a just result may be reached, the obvious course is to create a body which can investigate, with expert assistance, as summarily as possible, and which shall have adequate power to make appropriate orders. Such a body has been created in this State through the Public Service Commissions law recently enacted. If flat freight rates, either for all commodities, or for different kinds of commodities, were similarly to be fixed by the Legislature without investigation or proper ascertainment of their justice, our railroad business and our industrial and commercial interests would be thrown into confusion."

of road in those States. The corresponding figures for Texas are less than a fifth of those just given, being only 56,420. In New York, Governor Hughes, as already stated, vetoed a bill reducing fares to two cents, and in Pennsylvania the Supreme Court of the State declared a two-cent fare law unconstitutional and void, on the ground that the rate was too low to allow the roads to earn a reasonable return on the money invested in them. Similar laws in Arkansas, Alabama, Georgia, and other States have been enjoined by the Federal Courts for similar reasons. It would, therefore, seem to be very doubtful whether the Commission would be permitted by the courts to enforce a reduced passenger rate, even should it decide that such a rate is just and reasonable.

III. The Free Pass Evil Abolished.

The granting of free transportation to favored individuals who are not officers or employes of the railroads is a form of personal discrimination as indefensible as any other form of unjust discrimination. The practice is, in fact, more dangerous and more reprehensible than most other forms of favoritism, as it is usually made use of to secure political favors at the hands of legislators, judges, and boards of equalization.

In Texas, the question of prohibiting the free pass evil was hotly discussed in and out of the Legislature for a quarter of a century before the legislator could bring himself to the point of sacrificing to the public weal a privilege which he had so long enjoyed. Prior to the establishment of the Railroad Commission, several of the Governors had called the matter to the attention of the Legislature and urged that some action be taken. In 1887 a bill was introduced into the House of Representatives prohibiting all State and county officers from accepting free passes, under penalty of forfeiture of office for a violation of the law. Representative Alexander, of Hunt county, a strong advocate of the measure, declared that all judges of the Supreme Court and of the several district courts and ninety per cent of other officers were habitual users of free passes.⁵

In its first annual report, the Railroad Commission called attention to the evils of the free pass system and urged legislative

⁵*Galveston News*, January 22, 1887.

action on the subject. After quoting a strong passage from the First Annual Report of the Interstate Commerce Commission, the Texas Commission said: "In addition to the evils mentioned in the foregoing extract, it is believed free passes were given, during the political canvass which preceded the recent election in this State, for the purpose of influencing the election, and for the additional purpose of controlling a great measure of State policy, to an extent largely affecting injuriously the revenues of the railroads. And it is notorious that on former occasions free transportation has been liberally given by the railroads to persons to visit the capital during sessions of the Legislature to lobby for them against measures intended for the protection and relief of the people of the State."⁶

In 1895, in his first message to the Legislature, Governor Culberson urged the passage of a law to prevent the railways from giving free transportation to any one except officers and employes of the railways. He based his recommendation upon the two great evils resulting from the practice: First, the inherent political evil, and second, the injustice done to the portion of the people who had to pay fares. "Its use in attempts to control or influence or soften official action," said he, "is known of all men and when successful the effect upon public interests is obvious and corrupting. * * * In the field of politics, often dominating and directing primaries and conventions, its influence is still more demoralizing. It is unquestionably one of the most insidious and effective auxiliaries employed by railway companies in their efforts to secure favorable political results." Railways, he asserted, are practically agencies of sovereignty and special favors should no more be granted to a few favorites than should a like principle be followed in taxation or in the administration of justice.⁷

In 1900, Ex-Governor Hogg took up the abolition of the free pass evil as one of the famous "Hogg amendments."⁸ He secured

⁶Report for 1892, p. 31.

⁷*Senate Journal*, 1895, p. 37.

⁸The other two constitutional amendments which Hogg undertook to have adopted were, first, that no insolvent corporation should be allowed to do business in Texas, and second, that no corporate funds should be used in politics or in supporting a lobby at Austin. Raines, *Speeches and State Papers*, p. 366.

its insertion in the platform of the Democratic party, but it was not until two years after his death that the Thirtieth Legislature, in 1907, passed an efficient anti-pass law.

The preliminary reports for the year 1908 given out by the Railroad Commission, show that the advocates of the anti-pass law had overestimated the number of passes given to persons not entitled to them, and the consequent financial loss to the railroads. The total number of miles traveled on free passes was, for 1906, 113,000,000 miles, for 1907 it was 123,000,000 miles, and for 1908 under the new law it was 91,000,000 miles, or a decrease from 1907 of 32,000,000 miles. Not all of this decrease, however, is due to the operation of the law, for during the year ending June 30, 1908, there was a large decrease in all other forms of travel. The effective decrease in free travel which can be justly attributed to the law is a decrease in free travel by public officials of 6,400,000 miles, which at the average rate of two and one-fourth cents per mile would amount to \$143,000, or \$11.16 per mile of railroad, in Texas; and a decrease in travel on passes issued in exchange for newspaper advertising of 5,900,000, which at the rate mentioned would amount to \$132,000, or \$10.27 per mile of line.

That the anti-pass law has brought about the great reform for which it was enacted—the abolition of this obnoxious form of personal discrimination and political corruption—cannot be doubted. But it may very well be doubted if it has not gone too far in refusing to allow newspaper men to exchange their advertising space for transportation mileage. However, as money is plentiful, there seems to be no occasion for the newspapers and railways to resort to this form of exchange, and if each party was formerly getting a full equivalent for what he gave, it is difficult to see how any one could be injured by the substitution of a money transaction for the primitive barter and exchange.

IV. The Houston-Galveston Differential.

One of the most troublesome questions with which the Railroad Commission has had to deal is the question of the differential or arbitrary rate applied on shipments through Houston to and from Galveston. It has been the cause of much contention be-

tween the business interests of these rival cities and has been the subject of many hearings before the Commission, and on two occasions, at least, phases of the subject have formed the basis of suits in the courts.

The reason for a differential rate between Houston and Galveston, instead of a mileage rate based on the distance between the two cities, is that Houston, though not a port, has water connection with Galveston by way of Galveston Bay and the Buffalo Bayou. The distance by land is fifty miles and by water it is about seventy-five miles. But the water rates are much lower than the ordinary mileage rate for fifty miles by rail, and if a mileage rate were fixed on the railroads they would be practically excluded from participation in the business, which would all go by water. Therefore, the railway rate cannot be greater than the water rate, and this water rate is the differential or arbitrary that is added to the mileage rate based on Houston, in order to get the Galveston rate. That is, every shipment out of Galveston by rail is treated as if it originated at Houston and the rate is based on the distance from Houston to the point of destination. To the rate thus found the arbitrary is added to get the Galveston rate. Conversely, the rates on shipments to Galveston are found by taking the mileage rate from the point of origin to Houston and adding the differential.⁹

This arrangement of rates, it will be remembered, was in existence when the Commission was organized and had been for a number of years prior to that time. The Commission continued the arrangement, but made some alterations in the amount of the differentials. Galveston business interests, however, were not pleased with the arrangement and asked for a hearing before the Commission. The decision went against the complainants and they went into the District Court at Austin, but the Commission was sustained and no appeal was taken to the higher courts.

The Commission's decisions on the differential matter were again carried into the courts within the past twelve months. This

⁹It should be noted that the Houston-Galveston differential has no connection whatever with the differentials allowed in "differential territory" in the western part of the State. The differentials in the latter case find their justification in the sparseness of the population and the scarcity of freight tonnage in that territory. The Houston-Galveston differentials, if justified at all, must find their justification in the fact of water competition between the two cities.

case was brought in the Travis county district court by the Galveston Chamber of Commerce to resist the application of the differentials to shipments to and from Galveston over the line of the St. Louis, Brownsville and Mexico Railway. This road runs from Brownsville along parallel to the Gulf coast of Texas and intersects the line of the Santa Fe Railway at Algoa, a little station about half way between Houston and Galveston. From Algoa it effects an entrance into Houston and Galveston by use of the Santa Fe tracks. Although the distances from points on the Brownsville road to Houston were as great as those to Galveston, the Commission ruled that the differentials must be added on all shipments to and from Galveston. This arrangement would practically shut Galveston jobbers out of a territory that they regarded as legitimately tributary to their city, and they decided to make a test of the matter in the courts. The decision of Judge Wilcox of the district court was favorable to the Galveston contention and the Commission's rates were enjoined. This holding was affirmed by the Court of Civil Appeals.

In the public discussions and hearings on the question of the Houston-Galveston differentials, so much has been said of the differential on cotton shipments to Galveston for export that many people are not aware of the fact that the differentials apply to all other commodities and to shipments going in both directions. To the general table of mileage rates made by the Commission, applicable to all of the ten classes of freight and to all points within common point territory, there is made the following exception: "The rates between Galveston or Texas City and points in Texas not otherwise provided for shall be made by adding to the rates applying between Houston and such points the following figures." Then follow the arbitraries to be added to the Houston rate, running from seven cents per hundred on first class freight down to two cents per hundred on Class E.¹⁰ Now, in the general mileage rate table the maximum rate is reached at a distance of 245 miles, the maximum on first class freight being 80 cents per hundred. So if a shipment moves from Galveston to a point 245 miles or more from Houston, it takes the maximum mileage rate of 80 cents, plus the 7 cents differential. If the shipment moves over the Santa Fe Railroad, which does not pass through Houston,

¹⁰Report for 1907, p. 58.

the same result is obtained. Suppose, for example, that the distance covered by the shipment over the Santa Fe is 172 miles. Fifty miles, representing the distance from Houston to Galveston, is subtracted. The mileage rate for the difference, 122 miles, is found, by referring to the table of general class rates, to be 51 cents per hundred pounds on first class freight. To that the differential is added, giving a total rate of 58 cents.

It is very difficult to see any justice in the application of the differential to distance above the point where the maximum rate is reached. It amounts to making a foreign city of Galveston for which the maximum rate to points in common point territory is 87 cents, while for the rest of the cities of the State the maximum is 80 cents. Thus a manufacturer at Orange in the extreme southeastern section of the State can ship to Amarillo in the Panhandle, a distance of about 700 miles, for 80 cents per hundred pounds, but the Galveston manufacturer pays 87 cents for all distances above 295 miles—the 50 miles from Galveston to Houston plus the 245 miles at which the maximum rate applies. It is ordinarily supposed that a city is benefited by having water connections, but Galveston is penalized for having a waterway to carry her products at reduced rates for fifty miles of the distance. If Galveston's penalty is seven cents per hundred pounds for having an inland waterway fifty miles in length, one is led to inquire how great her penalty would be should the Brazos ever be made navigable to Waco or the Trinity to Dallas. And this penalty, it should be remembered, must be paid by the people of the northern part of the State on all goods imported by way of the ports of Galveston and Texas City.

Results equally surprising are obtained when shipments from the northern part of the State to Houston and Galveston are considered. Take for example, a shipment originating 500 miles from Houston. The rate increases as the mileage increases until a maximum of 80 cents is reached at a distance of 245 miles. For the next 255 miles to Houston there is no additional charge. This is true whether the shipment is destined for Houston or for Galveston, but as soon as it passes Houston on its way to Galveston an additional 7 cents is added to the cost. That is, the railroad is forced to haul the commodity 255 miles for nothing, but when the road comes into competition with the low water

rates on the Bayou, 7 cents is added to the rate the shipper must pay.

Thus Galveston is taxed alike on the products she consumes and on the products she ships to points in the interior of the State lying beyond the point where the maximum rate of 80 cents should apply. But in justice to the Commission it should be noted that for shorter distances the rate is less than the mileage rate would be, and for such distances Galveston enjoys the advantage to which her water connection entitles her. In further justification of the Commission's action it should be said that when the matter first came up Houston cotton factors did a large business in grading and selling cotton from interior towns where local cotton markets were either non-existent or were very poorly equipped for handling the business, and the Commission thought it would be beneficial to the people of the State to keep up the rival cotton markets at Houston and Galveston. There was also the plea for the vested interests of the Houston compress and warehouse men.

Whatever justification there may have been for this action, there would seem to be no reason for continuing an arrangement that penalizes the State's chief seaport. Should Houston become a port of entry, as now seems quite possible, there would be no reason for keeping up any differential whatever. In the meantime the only just arrangement would seem to be to make Galveston's maximum rate the same as that of other Texas towns, then make Houston the basing point and add the differentials for all distances up to the point where the Houston rate plus the differential would just equal the maximum rate, and no further. The plan here suggested would cause the Galveston rates to reach a maximum at a distance of 210 miles from Houston, for the mileage rate on first class freight for that distance is 73 cents, which added to the differential of 7 cents gives the maximum rate of 80 cents. To all points within a radius of 210 miles of Houston, that city would have a rate 7 cents less than Galveston's rate. To all points not less than 210 miles nor more than 245 miles from Houston, Houston's rate would be less than Galveston's, but the difference between them would decrease from 7 cents at 210 miles to nothing at 245 miles, where Houston's rate would reach the maximum limit. To all points beyond 245 miles from Houston, the

rates from the two cities would be the same. This arrangement would give to Galveston and the people of Texas the advantages that naturally flow from the possession of this bit of inland water communication.

The arrangement here suggested would apply to shipments of cotton to Galveston for export, as well as to all other shipments moving between Houston and Galveston. The only difference in the case of cotton is that the Houston maximum rate on cotton, 49 cents per hundred pounds, is reached at a distance of 160 miles, instead of 245 miles as in the general class rates, and the differential on cotton is 6 cents per hundred pounds, making the Galveston maximum rate 55 cents.

V. Need of Low Import Rates Through Galveston.

While the subject of low import rates through the Gulf ports of Texas has probably received less attention than the question of the Houston-Galveston differential, it is of far greater importance to the railroads, to the Texas ports, and especially to the people of Texas and the Southwest. It is doubtful if there is any change in the rate situation that could be made by the Railroad Commission of Texas that would benefit so many interests and injure as few as the lowering of rates from the Gulf ports to all points in the interior of the State. It offers an unusually good opportunity for the application of the principle of the back haul, or "back loading" as it is usually called.

The principle of the back haul may be stated briefly as follows: Whenever a railway has a very heavy tonnage in one direction, it can afford to take freight at very low rates rather than haul its cars empty in the opposite direction. As it costs almost as much to haul back the empty cars as it does to haul them back loaded, the wise manager will develop the tonnage where it does not exist by charging rates far below what he could afford to charge under ordinary circumstances. He will take any traffic that is offered if it will pay enough to cover the extra costs of handling it and leave a small amount to be applied to the general expenses of operation.

Now, apply this principle to the case in hand. The export traffic through Galveston is very heavy, exceeding in value that of any

other port in the United States except New York. In the export of cotton Galveston surpasses any two other ports. It takes first place in the export of wheat, and ranks high in the export tonnage of corn, oil, lumber, cotton seed products, cattle, and many other raw materials. By comparison, the import traffic of Galveston is ridiculously small. In value of imports Galveston ranks ninth among the ports of the country. The value of the exports through Galveston during the last two years was on an average \$200,000,000 per year, while the value of the imports for the same period was only \$7,000,000 per year. As a result only about one car out of every thirty secures a load for the back haul. Consequently, many thousands of cars that go to Galveston full are forced to return empty on account of high import rates, while the manufactured goods from Europe and our Atlantic States are hauled overland two thousand miles, and are sold to the consumer with the high railway rates added to the original costs, along with the middle man's profits on those rates. The merchants of all the central and northern part of the State buy their goods from St. Louis and Chicago jobbers, who in turn replenish their stocks from Eastern or European sources of supply. If the rates from Galveston were materially lowered, the jobbing center for Texas merchants would shift from St. Louis to Galveston and Houston and the people would get the benefit of a combination of the low water rates to the Texas ports and the low rail rates from these ports to the interior, while at the same time the railways would secure the benefit of the "back loading" which is now sadly wanting.

The full benefit of the change here suggested would be realized on foreign imports, and Houston and Galveston would become great importing and distributing points for the products of Europe and South America, and, after the completion of the Isthmian Canal, for the products of the Orient also. But the beneficial results on the coastwise trade from New England and the North Atlantic States might be prevented in whole or in part by a combination of the steamship lines with the railroads leading from the Northern and Eastern centers, by which the coastwise water rates could be kept so high as to force the traffic over the railways, as has been done in the past. For a remedy for this evil we must look to the Interstate Commerce Commission or other Federal agency, as it lies beyond the jurisdiction of the Texas Railroad Commission.

VI. Taxation of Railways.

It is not intended here to give a detailed history of the State's dealings with the subject of railway taxation, nor to undertake to lay down the general principles that should govern the State in the levy and collection of taxes on railway property. But it seems proper to mention the subject in passing and to note a few of its salient features.

Until three years ago the State depended for railway taxation almost exclusively on the general property tax levied by the county assessors, supplemented by a tax of one per cent upon the gross receipts from the passenger traffic. In many cases the values fixed by the assessors were ridiculously low, and the assessments varied greatly from county to county along the lines of a single road. The assessed value of all the roads in the State in 1890 was \$53,000,000, although the amount of stocks and bonds then outstanding was \$411,200,000.¹¹ Two years later the assessment had increased to \$63,000,000 and the outstanding securities to \$455,000,000,¹² while the assessment increased to \$73,600,000 in 1900, and to \$95,800,000 in 1907. Not only were the assessments too low but they were also quite unequal on different roads in the State. Thus the Galveston, Houston and Henderson, one of the best pieces of railroad property in the State, with an outstanding capitalization of \$60,000 per mile, was assessed in 1898 at \$7840 per mile, while the Tyler Southeastern, a weak road capitalized at less than \$14,000 per mile, was assessed at \$5470 per mile.

In 1905 the Legislature passed the Intangible Assets Law, which has resulted in a large increase in the assessed value of the railways for purposes of taxation, and has added materially to the State's revenues. That measure creates a State Tax Board, composed of the Secretary of State, the Comptroller, and the Tax Commissioner, and clothes it with power to determine, from statistical reports furnished by the railroad companies, the total value, tangible and intangible, of every railroad in the State. The Board also determines the physical value of the railroads, which, subtracted from the total values, leaves the value of the intangible assets of the companies.

¹¹Raines, pp. 43-44.

¹²Id., p. 158.

In arriving at the physical value of the railroads, the Tax Board takes the valuations placed upon them by the Railroad Commission, where the Commission's values have been made during recent years. But where several years have elapsed since the Commission's valuations were made, the Tax Board only makes use of them as a point of départure, the present value being estimated by making allowance for betterments, for the settling and seasoning of road beds, for advances in the value of rights of way and terminals, and for depreciation on account of wear and weather. As a result, there is considerable difference between the physical values of the railroads as estimated by the Railroad Commission and the Tax Board. The Commission's valuation, for 1908, on 12,274.70 miles of railroads classed as common carriers is \$208,860,000, while on a slightly larger mileage the Tax Board fixes a valuation of \$236,158,000. The total value, tangible and intangible, of all the roads in the State is fixed by the Tax Board at \$409,766,000. The intangible value is, therefore, \$173,608,000.

The values thus determined by the Tax Board are certified to the assessors in the various counties in proportion to the railway mileage in each county. The intangible values are entered upon the tax rolls and form the basis for the payment of State and county taxes on that class of the property of the roads, but under the Constitution the assessors cannot be compelled to accept the Tax Board's estimates of the value of the physical property. Some assessors have done so, while the great majority have continued to make up their own assessments, usually at figures far below those of the Tax Board. Thus the assessors' figures for the value of the physical property of the railroads for 1907, were less than half those of the Tax Board.

The recent tax legislation has produced a marked increase in the amount of taxes paid by the railroads. The fourteen principal railway companies of the State, having four-fifths of the mileage and nine-tenths of the business of the State, paid in taxes, in 1898, the sum of \$819,000. In 1906 the same companies paid \$1,457,000, and in 1907 they paid \$2,497,000, or an increase of 200 per cent. The amount to be paid in 1908 will doubtless be considerably below the amount paid in 1907, owing to the large reduction in the tax rate for 1908 from $12\frac{1}{2}$ cents on the one hundred dollars for 1907 to $6\frac{1}{4}$ cents in 1908.

A gross receipts tax, passed in 1905, to be paid by the railroads until the intangible assets law could be put into execution, has recently been declared unconstitutional by the Supreme Court of the United States.

VII. Re-Valuation of Railways.

Before closing this review of current questions, a word should be said regarding the necessity of a re-valuation of the railroads of the State by the Railroad Commission. For years the railroad companies have complained because the value of their properties, as fixed by the Commission for the purpose of limiting the issue of securities, has been far below what they considered a fair valuation. In this particular their contention has been greatly strengthened by certain testimony given during the recent hearing before the Interstate Commerce Commission held at St. Louis and San Antonio, and by the work of the State Tax Board, referred to in the preceding paragraph.

As stated in another connection, the average amount of stocks and bonds per mile of line in Texas on June 30, 1908, was \$30,893, while the average value placed upon the roads by the Railroad Commission was \$17,015 per mile of line. This valuation, the railway interests maintain, is far below the actual value of the roads, and there seems to be good ground for their contention. They base their objections to the Commission's values on two grounds: 1, the estimates were made many years ago and do not represent the present value of the properties, and 2, in arriving at the estimates the Commission included the physical values only, and gave the companies no credit for the value of their franchises, good will, and other elements of value of an intangible nature.

As we have elsewhere seen, the first objection is largely true. After the passage of the Stock and Bond Law in 1893, the Commission sent its engineers over all the roads then in existence and the estimates made by them were based on the cost of reproducing the railways as they stood at that time. Most of the work was done during the period of depression from 1893 to 1896, when prices of land, labor and materials were at the lowest point they have reached since the Civil War. The values thus arrived at have been used ever since that time, and the roads have been

given no credit for the rise in the value of lands, rights of way, station houses, and terminal facilities. Many classes of lands and city property have doubled and even quadrupled in value since 1896, and the owners of such lands have been free to use the increased values as a basis for borrowing money or securing credit in the commercial world. But the railroads of the State have not been given credit for a dollar of enhancement in the value of their property. They are not permitted to borrow a cent more per mile of line now than they were permitted to borrow in 1896, when values were at the lowest ebb. But that is not all. Not only have they not been given credit for the increase in the value of their property that has come with the growth of the community, but the Commission has not seen fit to give them any credit for money spent in betterments and permanent improvements—positive additions to the capital invested in the properties. It should be noted, however, that in the case of the new roads the valuations have been made more recently and are more nearly in keeping with the actual value of the physical property.

The question of re-valuation has not been regarded by the Commission as an important one, for it was believed that even if new estimates were made the roads would still be found to be over-capitalized, and, as a result, the companies would not be allowed to issue additional securities. But it would seem that while this was doubtless true in the past, the situation has changed in recent years as a result of the expenditures for betterments and the general increase of values of all classes of property in the State. For in the recent hearing before the Interstate Commerce Commission, Mr. R. A. Thompson, who for many years had been the chief engineer to the Texas Railroad Commission, testified that it was his deliberate opinion that the *physical* property of the railroads of Texas was worth on an average \$30,000 per mile of line. That is, he believes that the railroads cannot be replaced, at the current prices of land, labor, and materials, for less than \$30,000 per mile, an amount approximately equal to the total outstanding stocks and bonds. If this be true, the roads are not materially over-capitalized, even if consideration be confined to the value of the physical property only. This opinion of Mr. Thompson's is corroborated by the affidavit of Mr. W. G. Van Vleck, General Superintendent of the Galveston, Harrisburg and San Antonio

Railway, filed with the State Tax Board in 1907. He declared under oath that \$39,826 per mile was a fair and conservative estimate of the value of the *physical* property of his road, for purposes of taxation. The Commission's valuation of this road, made several years ago, is \$16,541 per mile.¹³

The roads object to the Commission's estimates, in the second place, because in making up the values no credit is given them for any of the non-physical elements of value possessed by them. That there are such elements of value the State fully asserts in its recent tax legislation for assessing the value of "intangible assets," as explained above. The value of these non-physical elements for 1908 was found by the State Tax Board to be \$173,608,000. The total value of all the property of the roads, tangible and intangible, as found by the Board, was \$409,766,000, while the value of a slightly smaller mileage, as estimated by the Commission, was \$208,860,000. From this it would seem that the State is taxing the railways on two hundred million dollars of property on which it refuses to allow them to issue securities of any kind.

The injustice of such an arrangement is apparent. There is probably no other class of business enterprises in the State that pays taxes on more property than it is allowed to use as a basis of credit in the commercial community. The ideal arrangement would seem to be to ascertain the true value of all the property of the railroad companies, whether tangible or intangible, and make that value the basis for rates, for capitalization, and for taxation. But even this arrangement would probably be unjust to the railroads as a basis for taxation, unless other classes of property in the State should be rendered for taxation at full value—a reform in tax methods which the present State administration is earnestly striving to bring to pass.¹⁴

¹³Third Annual Report of Tax Commissioner, 1908, p. 18.

¹⁴Since the above was written, the opinion here expressed has been fully sustained by a decision of the State Supreme Court. The case involving the point at issue arose in Dallas county, where the Missouri, Kansas and Texas Railway Company brought suit to restrain County Judge Lively and others from collecting taxes upon the full value of the intangible assets of the Company, when all other property in the county was assessed at two-thirds its actual value. The Supreme Court held that such an arrangement violated the constitutional guarantee that all taxes shall be equal and uniform.

From what has now been said, the conclusion would seem to follow that there should be a complete re-valuation of the railways of the State, that in making that re-valuation there should be included the cost of reproducing the roads at the prices now existing for land, labor, and materials, and in addition the intangible assets of every character possessed by the roads. The values thus obtained should be used as the basis for the issue of securities, for the making of rates by the Commission, and for levying State and county taxes. These values, however, should not be permanent, but should be adjusted from time to time as the roads increase in value, as they will certainly do with the growth of the State in wealth and population.

CHAPTER XII.

SUMMARY AND CONCLUSION.

An attempt has been made in the foregoing pages to give the reader a general survey of the transportation industry in Texas, from the days of the stage-coach and ox-wagon down to the present time. That survey has brought into view the development of the railway net, the growth and consolidation of the principal systems, the generous aid extended by the State in order to hasten the construction of proper railway facilities, and the efforts of the State to protect the public against the greed and favoritism of railway managers and to force the railway companies to perform impartially their duties as common carriers.

It has been said that the railway history of Texas divides itself naturally into three periods: 1. The "free period," prior to 1882, during which, by grants of land and money and valuable franchises, the people of Texas were extending every encouragement to railway construction and development. 2. The "fraud period," from 1882 to 1893, during which "the stock jobbers, inflationists, and consolidationists made their appearance in the field. They got control of the railways and appropriated their revenues, ran the roads down into dilapidation and forced them into reorganization through Federal court receivers. After squeezing and freezing out small creditors they wound up the receiverships and brought the roads out with their stocks and bonds in many instances quadrupled." And 3, the "fair period," dating from the adoption of the Stock and Bond Law, in 1893, by which these practices have been abolished.¹

In a speech before the Democratic State Convention, at Waco, April 19, 1900, Governor Hogg contrasted the transportation conditions in Texas, as he saw them at that time, with the conditions existing during what he called the "fraud period," prior to the creation of the Railroad Commission and the adoption of the Stock and Bond Law. He said:

¹Hogg's address before the Texas Legislature, February 5, 1901. Raines, p. 395.

"Before the campaign was made for State regulation the railway companies acknowledged to law but little or no obedience. Since it was successful and these laws were enacted they bow to the State authority and acknowledge responsibility to law. Then they arbitrarily fixed, and without notice, changed rates upon the test as to what the traffic would bear, regardless of the shipper's rights. Now they submit to the rates established by the Commission, after due notice, upon the principle that they must be reasonable to the shipper and railway. Then the rates were unstable, secret, fluctuating and changed at will. Now they are fixed, public, stable, and altered upon due notice only. Then the companies, by underbilling, rebates, and discriminations, favored their friends and punished their enemies. Now they cannot underbill, rebate, or discriminate, and they rightfully have no friends or enemies, but only patrons, amongst the shippers, as all are required to be treated impartially in charges and service. * * * Just preceding that period their tracks and equipment had so run down that an accident ticket could not be procured over either of the several main trunk lines. Now the roads are in such excellent condition that such tickets can be had at light cost over any line in the State. Then they were constantly in the hands of receivers. Now there is not a railway receiver in the State. Then employees were irregularly engaged and poorly paid. Now they have constant employment and are better paid. Then railway strikes were common. Now there are no strikes and have been none since the Commission was organized. Then wholesale houses, oil mills, factories, stock feeding pens and elevators were scarce and only found in central points. Now these industries and institutions are springing up and being well supported all over the State. Then our poor cattle and feed stuffs were shipped to other States, where the profits of that business were left. Now they are brought together and the profits are left in Texas. Then our grain could not be shipped to supply home demands. Now it takes the place of foreign grain and is shipped for home consumption to all points in the State. Then they issued from ten to twenty millions dollars of stocks and bonds annually, without reference to public consent or public interests, for purely speculative purposes, as a method of making and maintaining millionaires to be perpetual parasites upon our commerce. Now they cannot issue stocks and

bonds over the value of their property, and only by the consent and approval of the Railroad Commission.”²

This quotation, when some allowance is made for the overcoloring that inevitably finds its way into political addresses, fairly summarizes the results of the legislative policy upon which the State entered in the early nineties under the leadership of Governor Hogg. The adoption of this policy was not the work of demagogues and idle agitators, but of statesmen and patriots. If some of the remedies adopted seem drastic, they find justification in the character and extent of the evils that then existed and were daily growing more serious. For nearly a score of years the railway companies had practically been the masters of the people, defying the laws, controlling legislative action through the use of free passes, political favors, coercion, and actual bribery, and each year adding many millions to the flood of watered stocks and bonds. Rates fluctuated from day to day to such an extent that business was largely a game of chance, and no business man could be sure that his rival would not be able to ruin his business and drive him from the market as a result of some special favor or preferential rate granted him by the railways.

The results of the legislative policy adopted during the Hogg regime may be briefly stated as follows:

1. It has stopped the issue of fictitious securities, and in this way has gone far toward abolishing receiverships and reorganizations, and at the same time has established a reasonable basis for future rates.

2. It has abolished fluctuations and brought about that stability in rates which is so essential to the business community.

3. It has abolished secret rebates and discriminations in freight rates and passenger fares and has forced the carriers as agents of sovereignty to render their services to all on exactly the same terms.

4. It has established uniform rates for the big city and for the small village, thus encouraging the development of many small industrial and trade centers instead of a few large ones, and tending strongly to preserve that equality of opportunity and even distribution of wealth upon which our democratic institutions are believed to be founded.

²*Id.*, p. 365.

It is sometimes asserted that the State's policy has driven away foreign capital, checked railway building, and retarded the development of the natural resources. Probably this is true to some extent. But what of it? Political and social institutions are not founded primarily for money-making or the exploitation of natural advantages. Any community can well afford to delay somewhat the building of railroads and the felling of forests, if such delay be the price that must be paid for the preservation of its republican institutions. But as shown elsewhere, there has been but slight reduction in the rate of railway building in Texas since the era of reform began and it is not altogether certain that this reduction has been due to the railway policy of the State. The amount of new mileage added in recent years compares favorably with that added in other states situated as Texas is, though, as might be expected, new States like Oklahoma show a larger relative increase.

The evils of twenty years ago have now been abolished in large measure and many believe that in the future a more liberal policy should be adopted in dealing with the railroads. The companies now recognize the supremacy of the law and in general have come to see that much that has been done was best for the railways as well as essential to the protection of the public. They have been shorn of most of their political power by the laws which prohibit lobbying and abolish the free-pass evil. In other words, it is believed that, since the railways have now been reduced from the position of masters to that of servants of the people, the State can afford to adopt a policy sufficiently liberal to allow the companies to make the many extensions and betterments which all agree are necessary to provide the community with adequate railway facilities. Such a plan would seem to be in line with good public policy, aside from any question of fairness to the owners of railway property.

The policy of public regulation of railroads now seems fairly acquiesced in by all classes in Texas, and any dangers to the cause that may arise in the future will come from internal rather than external forces. At present, friends of effective railway regulation apprehend two possible dangers. One is the possible assumption of the functions of the Railroad Commission by the Legislature, such, for example, as the fixing of rates and fares by legislative enactment. Probably no surer method could be found for lowering

the dignity of the Commission and ultimately bringing it into disrepute than for the Legislature to step in and assume the important functions which the Commission was created to perform.

The other possible danger is that the Commission may at some time become involved in politics and be used as a stepping stone to higher political positions. The power of a railroad commissioner in Texas is very great, greater in many respects than any other officer in the State government. An ambitious candidate for the office of Commissioner could secure many supporters by promises of reductions in the rates and fares; for, unfortunately, not many people would stop to think that those very promises would disqualify him for the office he seeks, as he could not thereafter sit as an impartial judge of questions upon which he had already declared himself. In at least one injunction suit brought against the Railroad Commission in the past, the railroads set up as a ground for restraining the enforcement of the rates, the fact, as they alleged, that one of the commissioners was disqualified by reason of such pre-election pledges of rate reductions. On the other hand, it is easy to see how corporate influence could be secured in return for promises unduly favorable to the railroad interests.

In another connection, attention was called to the other phase of this possible political entanglement, where it was pointed out that it would be possible for political considerations to play a prominent part in the decision of cases submitted to the Commission, if the office of Commissioner should come to be regarded as a stepping stone to higher official positions. If the railroads or the people should ever come to believe that such considerations were entering into the decisions, it would result in a serious loss of confidence in the Railroad Commission and its decisions, and, incidentally, might do serious harm to the reputation of an innocent man or body of men. Such a loss of confidence would weaken the Commission's influence and would result in more frequent appeals by the railroads to the courts. It was to avoid this possible ground of suspicion that Hogg originally recommended to the Legislature that the members of the Commission be disqualified for holding any other office for two years after the close of their terms of office as railway commissioners.

In conclusion, it may be noted that the work of railway regu-

lation is largely a task for the National Government. A large share of the freight and passenger business in which the people of Texas, or of any other State, are interested is interstate traffic and, therefore, lies wholly without the direct jurisdiction of the State governments. During 1908 more than seventy per cent of the tonnage handled by the Texas roads was interstate and international in character. And the amount of interstate traffic is each year growing larger as compared to intra-state traffic, due to the localization of industries and the resulting growth of inter-sectional trade and commerce. The whole country is becoming a single commercial unit, and for purposes of trade State lines are being obliterated. If this process continues, as it certainly will, the people will be forced to rely more and more largely upon the Federal Government for the effective control of these great channels of commerce.

BIBLIOGRAPHICAL NOTES.

The material for the preceding report on the transportation problem in Texas, has been collected from many different sources and authorities. No complete bibliography will here be attempted, but it is believed that a brief mention of the sources which have been found most useful will prove helpful to students who may wish to prosecute their investigations further. In the list which follows the sources are arranged, roughly speaking, in the order of their importance.

For the study of the legal side of the railway problem in Texas, the indispensable source book is Gammel's *Laws of Texas*. This is a reprint in twelve volumes of all the laws, ordinances, and constitutions adopted by the Republic of Texas and by the State of Texas down to and including the acts of the special session of the Twenty-seventh Legislature in 1901. Many of the most important laws in force while Texas was a part of Mexico are also included in the list of documents. A fair analytical index forms one of the volumes of the set as published by the compiler, but a much better index was published by the late State Librarian, C. W. Raines.

Another important source for the study of the legal phase of the subject is the journals of the Senate and House of Representatives of the State Legislature. A complete file of the journals of both branches of the Legislature, in manuscript, is to be found in the vaults in the office of the Secretary of State, in the Capitol, at Austin. Also an almost complete printed set of the journals. Incomplete printed sets may be found in the State Library and in the Library of the University of Texas. These journals contain the messages of the Governors, reports of important committees, copies of the most important bills, with substitutes and amendments, and occasionally remarks made by the members.

The newspapers published in the State furnish much material in regard to the great difficulties experienced in reaching the markets in the early days and are especially valuable as sources for the history of the Railroad Commission. All the newspaper files collected in the State Library prior to 1881 were lost in the fire

that destroyed the old State Capitol. For the period since that date, both the State Library and the University Library have fairly complete files of the more important papers published in the State. A large number of newspapers for the period preceding the fire have been collected by the State Library and the University Library, but the files are very broken and incomplete. For the period of the Republic, the most valuable file is that of the *Telegraph and Texas Register*, a weekly paper published at Houston. Together the State Library and the University Library have a complete file from 1835 to 1845, with the exception of ten issues which are missing. Other papers covering parts of the same period are *The Austin City Gazette*, published at Austin, *The Morning Star*, published at Houston, the *Colorado Gazette and Advertiser*, and *The Matagorda Bulletin*, both published at Matagorda, and the *Red-Lander*, published at San Augustine. For the period of statehood the most important newspaper files in the State Library are those of *The Texas Democrat*, the *State Gazette*, *The Southern Intelligencer*, and *The Texas States Times*, published at Austin; *Flake's Commercial Bulletin*, *Flake's Daily Bulletin*, *Flake's Weekly Bulletin*, *The Galveston Weekly News*, and *The Galveston Daily News*, published at Galveston; *The True Issue*, *The Far West*, *The La Grange Intelligencer*, *The La Grange New Era*, *The States Rights Democrat*, and *The Texas Monument*, published at La Grange; *The San Antonio Daily Herald*; *The Lavaca Journal*; and the *Texas Republican*, published at Marshall. Considerable newspaper material is to be found in the other libraries in Texas. The files in the Carnegie Library at Houston are said to be quite complete, but they have not been examined in the preparation of this bulletin.

For a true picture of transportation conditions in the various counties of the State, together with material regarding stage routes, markets, prices of products, early river navigation and the attempts to improve the rivers, no source is superior to *The Texas Almanac*. This was an annual prepared and published by Richardson and Company, publishers of the *Galveston News*, beginning with the year 1857 and ending with the year 1873. "These Almanacs published for the first time much of the original materials for a history of Texas, and are recognized today as the great depositories of valuable information, historical and miscellaneous,

as to Anglo-Saxon Texas. No collection of *Texana* is complete without Richardson's Texas Almanacs."¹

The annual reports of the Railroad Commission of Texas form the most important source of information relating to the work of the Railroad Commission. They also contain much historical and statistical material concerning the railways of the State, since the establishment of the Commission in 1891. For the period prior to the creation of the Commission the reports of the executive departments of the State government contain considerable railway material. Especially useful are the annual reports of the Comptroller, the Secretary of State, and the Commissioner of the General Land Office, together with the one report of the State Engineer, made in 1885. For several years prior to the creation of the Railroad Commission, the Comptroller's reports contained summaries of the reports made by the various railroad companies doing business in the State. The reports of the Secretary of State contain lists of charters granted to railways, while the Land Commissioner's reports furnish information as to grants of land to railways. The court reports are also worthy of attention. Much information, in addition to the legal questions adjudicated, is to be gleaned from a study of the railroad cases reported in the Texas Reports and the United States Reports. Still further material may be found by an examination of the transcripts of these cases, kept on file in the archives of the Supreme Court of Texas.

About the only source of information in regard to the Huntington-Gould Agreement is a typewritten copy of the contract by which Gould and Huntington settled their differences and pooled their competitive traffic, which is on file in the office of the Auditor of the Railroad Commission of Texas.

Poor's *Manual of the Railroads of the United States*, published annually since 1869, is the greatest known store-house of information concerning the railways of the whole country, including those of Texas. So far as the present writer is informed, the only set of this valuable source-book accessible to Texas students of transportation problems is that in the office of the Auditor of the Railroad Commission. This set has only a few scattered volumes of earlier date than 1885.

¹Raines, *Bibliography of Texas*, p. 174.

Mr. Alexander Deussen, Instructor in Geology in the University of Texas, is the author of three good articles bearing on the transportation history of Texas. One of these, "The Beginnings of the Texas Railroad System," *Transactions of the Texas Academy of Science*, 1906, Vol. IX, pp. 43-74, gives an account of railway building and State aid prior to the Civil War. Another, entitled "Has the Railroad Commission of Texas Succeeded in Preventing Discriminations?" was published in *The University of Texas Record*, 1902, Vol. IV, No. 4, pp. 422-462. The third article, entitled "Land Grants to Railroads in Texas," is unpublished but was kindly placed at the disposal of the present writer, and was of great assistance in the preparation of the chapter dealing with State aid to railways.

Another series of useful articles has been published by Mr. Robert A. Thompson, for many years Expert Engineer to the Railroad Commission of Texas. These articles are as follows: "The Development of the Present Texas Railway System," *Transactions of the Texas Academy of Science*, 1900, Vol. IV, Part I, pp. 57-80; "The Regulation of the Issue of Texas Railroad Securities by the State Government," *Trans. Tex. Acad. of Sc.*, 1902, Vol. V, pp. 3-17; "Some Figures on the Cost of Texas Train Service," *Trans. Tex. Acad. of Sc.*, 1907, Vol. X, pp. 53-63; and "The Taxation of Railways in Texas," *Railway World*, February 10, 1905.

Another article that deserves special mention is one by Mr. E. T. Miller, Instructor in Economics in the University of Texas. The article, entitled "The Texas Stock and Bond Law and Its Administration," *Quarterly Journal of Economics*, November, 1907, Vol. XII, pp. 109-119, is the best published account of the Texas method of controlling the issue of railway securities.

Before closing these notes, mention should be made of a few public addresses that contain valuable information on the Texas railways. First among these addresses, should be mentioned the speech of Hon. A. W. Terrell, delivered in the State Senate on July 19, 1876, and published in pamphlet form. The address was made in opposition to a bill proposing to extend the time for completing certain sections of the Texas and Pacific Railway, and contains not only a history of that company, but a history of the whole effort to secure a transcontinental line through Texas to the

Pacific Coast. The following year, Vice President Frank S. Bond, of the Texas and Pacific Railway, published a pamphlet entitled *The Texas and Pacific Railway Company's Relation to the State of Texas*, which undertook to answer the speech of Senator Terrell, and which contains much information in regard to the difficulties that were overcome in the construction of that road, and the small returns that the railways realized from the sale of the State lands they received.

Probably the two most important addresses made in the Legislature during the fight over the creation of the Railroad Commission were those delivered by Judge T. J. Brown, in the House, on February 7, 1889, and that by Senator H. D. McDonald, in the Senate, on February 25, 1889. The former favored the creation of a commission, while the latter opposed it. Both were published in pamphlet form and are to be found in the State Library. But by far the most important public addresses on the commission question were those delivered by former Governor Hogg. They have been collected and published in *Raines' Speeches and State Papers of James Stephen Hogg*, State Printing Company, Austin, Texas, 1905.

Mention should be made of the *Railroad and County Map of Texas*, compiled and drawn by Engineer R. A. Thompson, and published annually by the Railroad Commission of Texas. The maps of the railway systems published as a part of this report were made from the Commission map for 1908.

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